UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 18 CR 872 (VM)

LLOYD KIDD,

Defendant.

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New York, N.Y.
July 12, 2019
8:30 a.m.

Before:

HON. VICTOR MARRERO,

District Judge

APPEARANCES

GEOFFREY S. BERMAN
United States Attorney for the
Southern District of New York
MOLLIE BRACEWELL
ELINOR TARLOW
JACOB GUTWILLIG
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Assistant United States Attorneys

ZACHARY MARGULIS-OHNUMA
VICTORIA MEDLEY
Attorneys for Defendant

ALSO PRESENT: USAO Paralegal Specialist Hannah Harney
Defense Paralegal Specialist Sophia Lattanzio
Special Agent Brian G. Gander, FBI

(In open court; jury not present)

THE COURT: Good morning, be seated. We distributed the draft of the jury instructions incorporating the edits, comments, that we discussed last night or evening. We also received an e-mail from defendant making some additional comments as we asked them to do in writing. And perhaps we can first go over the revised draft in blackline, and then go over the comments that the defendant submitted, and then we have one open item from yesterday, which is the question of the 911 call and how we want to resolve that.

First, looking at the blackline version of the draft instructions, are there any additional comments that the parties may wish to make? Focus in some instances on language which appears in bracket in the alternative so we can determine which of those formulations the parties can agree to, or, if not, I'll make a ruling.

Government?

MS. TARLOW: Yes, your Honor. The government would request that the bracketed language -- the government requests that the original language be included. If the Court is not inclined to include the original language of "climate of fear," then that the Court include the bracketed language.

THE COURT: I gave that a lot of thought. My view in making the proposed change is that the phrase "climate of fear" is a little bit cliche-ish, frankly, and what people are

concerned with is not the climate, and but it's feelings and sense. And that's why I'm suggesting reasonable feelings of fear or a reasonable person.

MR. MARGULIS-OHNUMA: Can you point me to which page? I just was able to pull it up.

MR. RAVI: 38 and 39 of the blackline.

THE COURT: That's on page 37, 38 of the blackline version. My view was that the sentence on page 38 that begins with "a threat of serious harm and" is deleted there. Essentially, is a repetition of what's on 37. So I tried to find what language in 38 is not included and what isn't in 37 in the definition of serious harm. And in terms of what's material, the one phrase that I thought might be important to include on 37 is what's underlined there as in kind or degree. But the rest of the language, really, is repetitive.

MR. MARGULIS-OHNUMA: Sorry. Kind or degree is on which page?

THE COURT: On 37. And you will see that it is also included in the sentence that's crossed out on 38, where the phrase in kind or degree.

MR. MARGULIS-OHNUMA: I'm concerned I'm looking at the wrong version.

THE COURT: You're looking at the blackline version that we distributed?

MR. MARGULIS-OHNUMA: Yes.

THE COURT: If you look at page 37 of the blackline, the second full paragraph.

MR. MARGULIS-OHNUMA: I see it on page 36. I guess the -- sorry, your Honor. Thanks.

I have no objection to the new language "in kind or degree." But I agree that the option omitting the other language is preferrable and avoids repetition. I think the government will make their point about the climate of fear in closing, without having to repeat it multiple times in the instruction.

THE COURT: Anything else, government?

MS. TARLOW: Your Honor, we think it is an appropriate instruction to give. We've given many cases that support that kind of instruction to describe the context in which the individual was engaging in sex trafficking, and we think it is relevant to do it here.

THE COURT: Let's move on then. Next? Government, do you have any other comments?

MS. TARLOW: No, your Honor.

THE COURT: In that case, why don't we get the government's comments to Mr. Margulis-Ohnuma's e-mail which contain four points.

First point.

MS. TARLOW: Yes, your Honor. We think that that instruction is not necessary. That section deals with the age

of the victim, and we think it abundantly clear in that section that the victim must be under 18. So, it is repetitive and unnecessary to include that additional portion of that sentence.

THE COURT: Mr. Margulis-Ohnuma?

MR. MARGULIS-OHNUMA: Again, my page number is messed up so I want to make sure I'm looking at the same thing. Although this should be consistent with what's on my computer.

THE COURT: Your message reads at page 35.3.

MR. MARGULIS-OHNUMA: Yes. Which is actually in the instructions I was just handed by the government is on page 36. Right? Is that right, Ms. Tarlow? Just before request number 11? Is that right? What we're talking about?

So the issue there is, it sounds like, based on reading one, two, three, it is sufficient if he had a reasonable opportunity to observe her, whether or not her age was under 18. So I think the additional language is necessary to make that clear. And you note the -- the instruction as they exist note the age in the other two prongs. It sounds like if he had -- which it's a ridiculous reading but it is a literal reading. But if we're noting in the age in the other two prongs, it seems like it should also be an reasonable opportunity to observe prong.

THE COURT: Ms. Tarlow?

MS. TARLOW: Your Honor, we don't think it's

necessary, but if your Honor is inclined to include that, we won't object.

THE COURT: Why don't we accept that change. Next, Mr. Margulis-Ohnuma, you made reference in your comment to 37, page 37 and 38, that's exactly the point that we just discussed and I'm inclined to leave the draft with the language that the Court has suggested adding and deleting the sentence on 38, and using the reasonable feelings of fear instead of a climate of fear. So, that's agreed that the blackline version of pages 37 and 38 is what the Court will go with.

Your third comment says that at 38 request delete the paragraph starting with "also." What's your proposal there? What is your rationale? I assume that's the paragraph that says "Also the fact that a person may have initially acquiesced." Is that the language you're suggesting?

MR. MARGULIS-OHNUMA: Yes, it's that paragraph to the end of the instruction. I feel like the conversion of a defense theory instruction. Sort of like, okay, this is what the government's going to argue. But it is really not necessary to be in the instructions. They're going to say, everything was hunky-dory at the beginning and then Mr. Kidd became violent with people. So, it's not a defense that it was -- that he was nice to them at the beginning or didn't force them at the beginning, and I think that really goes to their argument. I don't think it's necessary in the

instruction. Of course, if the jury has questions about that we could respond. But, it almost tracks the language of the government's expert in talking about the different ways that a victim can be lured and then forced into prostitution. I would just object to it. It's really awfully one sided.

MS. TARLOW: Yes, your Honor. We think this is an important instruction to give. It is relevant to this case. There are victims in this case who we expect defense to argue may have initially agreed to engage in sex trafficking, and later, as the government alleges, was forced into sex trafficking. It's supported by pattern criminal jury instructions in the 11th Circuit and has been given in other similar cases in this district. Including United States v. Purcell, 18 CR 81.

THE COURT: Thank you. I'm going to reject this proposal. I agree that it is an aspect of the dispute in this case, and the jury is entitled to have the evidence in the case reflected in -- and theories of the government and the defense reflected in the instructions. Yes.

MR. MARGULIS-OHNUMA: Your Honor, I would preserve my objection, but then request if it is staying in in any case, to balance it with a sentence at the end stating that However, if you find that any of the -- or, the alleged victims in Counts One, Three, or Four merely worked for Mr. Kidd as prostitutes, without finding that they were forced to do so by use of -- or

that they were caused to do so by use of force, fraud or coercion, then you must acquit Mr. Kidd.

THE COURT: Ms. Tarlow.

MS. TARLOW: Your Honor, I think there's several problems with that. The first is it is abundantly clear in the Court's instructions that force, fraud or coercion or a combination of such means is required for a conviction on Counts Three, Four, and one way in which there can be conviction on Count One is also unnecessarily confusing, since there can be conviction on Count One in a different manner, if the jury finds that the victim was underage.

THE COURT: Thank you. Mr. Margulis-Ohnuma, I think that your proposal is getting too far into granular explication of facts, and I think that it is not necessary.

MR. MARGULIS-OHNUMA: Your Honor, just to be clear, I don't mean to belabor it.

THE COURT: You've reserved your objection on that so let's not belabor the point.

MR. MARGULIS-OHNUMA: Yes, Judge.

THE COURT: I'm agreeing it is not appropriate to make that change. Your next comment says on page 45, requests that we add -- and you have a paragraph that's in bold there. Government?

MS. TARLOW: Yes, your Honor. We would object to this addition. It has only been used in the Ninth Circuit on

certain occasions. It has been rejected in several other circuits, including the First Circuit, Seventh Circuit, Sixth Circuit, Eleventh Circuit, Eighth Circuit and Fourth Circuit. And we don't think it would be an appropriate instruction here.

THE COURT: Mr. Margulis, any response to that?

MR. MARGULIS-OHNUMA: Yes. I mean, my response is that Ms. Tarlow, as ever, is extremely well-versed on the law and I don't disagree with her characterization of it. It is an open question in the Second Circuit. Circuit courts -- I think it's given from time to time in the district courts here.

At the same time, I think this case, the facts of this case, really tee it up in that we have presented evidence that Mr. Kidd had a reasonable belief that everyone -- that Ms. Brown was over 18. A jury absolutely could find that. So, under those circumstances, I think the cautious road for the Court really is to just give the instruction. And I think it is a correct characterization of the law, given the First Amendment and the Ninth Circuit reasoning that I cited in the e-mail.

THE COURT: Ms. Tarlow, you made reference to district courts in this circuit which have rejected this language? Or are there some that also have accepted it?

MS. TARLOW: To be clear, I was referring to circuit -- other circuits that have rejected this language. And we have not found any district courts in this circuit,

although, to be candid with your Honor, we have not spent significant time researching this. This was not an instruction that was requested by the defense originally. And if your Honor would like more briefing on the matter, we could provide that.

THE COURT: See if you can find any further research on the matter.

MR. MARGULIS-OHNUMA: Judge, I'll cut to the chase. I think I may have misspoken. What I meant to say -- I think I said the opposite of what I meant. This pro defense instruction I don't think has been given. I think I would know about it if it had been given in the district courts. So I think it's, I think they may be able to find authority rejecting it. I feel like it would have been on me to find it if it had actually been endorsed by one of the Second Circuit district courts, and I'm not aware of that, and we did look.

THE COURT: All right. If you looked and you did not find it, it is likely that the government also will not find it, then I would be inclined to go with the overwhelming authority in other circuits that has rejected this. All right. That takes care of the instructions.

Let's now move to the other open issue. I'm sorry. Before we do that.

MR. MARGULIS-OHNUMA: Judge, I'm sorry. Can I just preserve the record. I recently learned that -- or maybe I can

do this wholesale. I recently learned that if you don't raise an objection to a jury instruction at the Rule 30 conference, which this is, then the government is arguing it's been waived in another case of mine. So what I would like to do is ask if the Court could accept my -- I'd like to preserve all of the written and oral objections that I've made up to this point. Can we just do that or else I'll try to reconstruct them.

THE COURT: You may. Bear in mind also that it is my practice, after giving the instructions to the jury, to have a sidebar in which I pose the question to you whether you have any further comments or objections to the instructions as read. So that will be your last clear chance to reserve whatever you may have.

MR. MARGULIS-OHNUMA: Thank you, Judge.

THE COURT: And I will acknowledge that you have submitted objections during the course of the trial and at the conferences, so whatever you have articulated on the record is part of what you reserved. All right.

MR. MARGULIS-OHNUMA: Thank you.

THE COURT: The verdict form, I have received the modifications that the parties proposed, and I'll adopt those into the final verdict form.

So let us now turn to the issue we reserved yesterday concerning the government's rebuttal evidence by means of the 911 call. Ms. Tarlow.

MS. TARLOW: Yes, your Honor. We do not intend to put on a rebuttal case.

THE COURT: All right. So, the record then remains now closed or the evidentiary portion of the case.

MR. MARGULIS-OHNUMA: Judge, actually, there was one exhibit, there was a stipulation that I neglected to offer into evidence. I did read it into evidence. It was Defense Exhibit M. If I could just offer that into evidence at this time. It was the stipulation about the prior inconsistent statement.

THE COURT: There was a stipulation concerning the notes of the FBI agent.

MR. MARGULIS-OHNUMA: Correct.

THE COURT: My understanding was that the stipulation was read and accepted as stipulated.

MR. MARGULIS-OHNUMA: Right. And it was, at the bottom of it said it could be accepted as an exhibit in evidence. So I'm just offering the stipulation itself which is signed into evidence, so I can use it in closing.

THE COURT: All right. I think by definition stipulations that are accepted are part of the evidence, so yes it will be accepted admitted.

(Defendant's Exhibit M received in evidence)

THE COURT: Is there anything else?

MS. TARLOW: Not from the government.

THE COURT: Mr. Margulis-Ohnuma?

MR. MARGULIS-OHNUMA: Not from the defense.

THE COURT: We told the jury 9:15. So, we will go and develop the final version of the instructions that the Court will read when the jury comes back in about 15 minutes. Thank you.

(Recess)

(In open court; jury not present)

THE COURT: Bring in the jury, please.

MR. GUTWILLIG: Your Honor, may we move the podium?

THE COURT: Yes.

(Jury present)

THE COURT: Good morning. Thank you very much for your cooperation in being here on time.

At the close of the proceedings yesterday, I mentioned that there might be one evidentiary issue for which I maintained the record open. That matter has been resolved, so the evidentiary record is now complete. And we move into the next phase of the trial, which is the parties' closing arguments.

I will give you the same instructions I've already alluded to a number of times. The closing arguments of the parties are not evidence. Anything that the parties may say in their closing arguments that refer to matters of law you should disregard. The law is only that which I will give you after the parties are done with their closing arguments. The closing

arguments are intended to give you the parties' version of what they think the evidence has established or not established, and again, are not to be considered by you as evidence in the case.

The procedure is that the government, which has the burden of proof, goes first. The defendant may, if he chooses, make closing arguments. And if the defendant does make closing arguments, the government then has the last opportunity for rebuttal statement.

Government?

Each side has requested about 45 minutes for closing arguments.

MR. GUTWILLIG: "Let me tell you something. One of the reasons why chicks even feel comfortable do doing shit like this, is they've never really been fucked up by a man. This is my thing. I said, chicks like that, all they need is one good lashing. Just one. Like full strength. You want to act like a man, you need to get your ass beat one good time, full force. You'll be all right. You'll be straight after that."

Those are the defendant's words. Those are his words. What else did the defendant say? That he knew Kaira, that he prostituted her. Kaira, a 16-year-old girl. That he took pictures of Jessica, the ones that you saw in the Backpage ads that the defendant posted, selling her for sex. The one taken when she was 14 years old. That he prostituted Dana and Arielle, along with more than 50 other women and girls. His

words, the defendant's words. Lloyd Kidd's words.

More important than his words, the victims' words. The ones that described how the defendant abused them, assaulted them, humiliated them, and controlled them. The victims who lived in Chris Kidd's world. The ones who lived through it.

You've seen and heard a lot of evidence over the past few days. That evidence overwhelmingly proves the defendant's guilt of all five counts charged in the indictment.

The evidence includes advertisements for sex that the defendant posted on Backpage.com, vulgar, graphic advertisements selling the victims for sex, the contents of the more than 20 electronic devices seized from the the defendant's apartment, including photos and videos of Kaira -- then just 17, naked and engaging in sexual acts.

The defendant locked away in his safes guns, drugs, even the envelopes he used to keep the money his victims made for having sex.

You've also seen independent records corroborating all this. Photographs, phone and e-mail records, birth certificates, videos. They all corroborate, they all back up what you've heard about the defendant's sex trafficking business.

Most importantly, you heard from the victims themselves, from Kaira, from Aisha, from Sabrina, from Arielle,

and from Dana. You saw their raw emotion. You saw their courage, you saw them tell their stories. They walked in here, they took the stand, and they told you about traumatic events in their lives, about difficult and embarrassing details of their past. The raw, unvarnished truth about what happened to them. How the defendant prostituted some of them when they were minors, how he prostituted some of them through force, through coercion.

The evidence you've seen and heard in this trial is overwhelming. It proves that the defendant was a violent, coercive, prolific, pimp. That he targeted vulnerable women and girls, and that he prized one characteristic above all else: Submissiveness, obedience, compliance, compliance with his demands. Physical force, choking, grabbing, sexual violence, forcing himself on victims while they were asleep, and threats. Taking away one's child, blackmail through a sex tape.

This wasn't by happenstance. It was an M.O. It was his pattern. Recruit, humiliate, control. The rules were clear. That's how the defendant ran his sex trafficking business. And today, I'm going to walk through the evidence that proves his guilt beyond a reasonable doubt.

This summation is the government's opportunity to explain how all the evidence fits together. How the proof in this case is clear and consistent, and how it proves beyond a

reasonable doubt that the defendant is guilty.

Let me begin by taking a few minutes to review the charges. Because that's what you're being asked to decide today. In brief, the defendant's been charged with sex trafficking of minor girls and women, including by force, fraud, or coercion, to cause them to engage in sex acts. He's also been charged with producing child pornography.

Count One, Two, Three and Four deal with sex trafficking. Count Five deals with the production of child pornography.

After the attorneys are finished here today, Judge Marrero will instruct you on the law that's applicable to each of those counts. What Judge Marrero says controls. This overview is just meant to help you understand how the evidence satisfies each element of each count beyond a reasonable doubt.

Count One charges the defendant both with sex trafficking of a minor and sex trafficking by force, fraud or coercion of Kaira. You may find the defendant guilty on either of both of the charges in Count One. I expect that Judge Marrero will instruct you that the defendant can be guilty of sex trafficking if he took any of the following actions with respect to someone whose engaged in commercial sex: Recruited, enticed, harbored, transported, provided, advertised, obtained, maintained. That is an incredibly broad list, and the defendant engaged in many -- if not most -- of these actions

with respect to the women and girls he prostituted.

Now, Judge Marrero will instruct you on the law. But at the outset, two things to keep in mind about sex trafficking of a minor, which is applicable to counts One -- Kaira -- and Count Two -- Jessica.

First, as I expect Judge Marrero will instruct you, the defendant need not have knowledge that the victim is a minor. It is sufficient that the defendant recklessly disregarded that the victim was a minor, or, that the defendant had a reasonable opportunity to observe the victim. Basically, the defendant had a chance to see them.

Second, as I expect Judge Marrero will instruct you, consent is not a defense to this crime. Period. End of story. A minor cannot consent to prostitution. A minor cannot consent to being sexually exploited.

As I mentioned, Count One -- Kaira -- also charges the defendant with sex trafficking by force, fraud or coercion. That's the same charge in Count Three -- Dana -- and Count Four -- Arielle.

As I expect Judge Marrero will instruct you, the difference for this charge is that instead of or in addition to being a minor, the government must prove that the defendant used force, threats of force, fraud, or coercion, or a combination of those things, to engage in sex trafficking. Basically what it sounds like. However, as I expect Judge

Marrero will instruct you, coercion can mean any of the following: Threats of serious harm to, or physical restraint against, any person, any scheme, plan or pattern intended to cause a person to believe that failure to perform a sex act would result in serious harm to, or physical restraint against, any person, or the abuse or threatened abuse of law or legal process.

Finally, Count Five charges defendant with inducement of a minor -- Kaira -- to engage in explicitly sexual conduct for the purpose of producing a visual depiction of that conduct.

Many of the facts in this case are not in dispute. The evidence leaves the defendant no choice. His testimony yesterday leaves him no choice. There can be no question that the defendant was a pimp. Defense counsel conceded that in her opening statement. And that was before the defendant took the stand himself and testified that he prostituted upward of 50 women and girls.

Also not in dispute, that the defendant recruited women and girls to engage in prostitution for his benefit. That he specifically targeted submissive victims. Those were the kind of women he wanted to recruit, because he wanted to be in control.

That the defendant took naked pornographic pictures of Kaira, that he saved them on his devices, that he posted them

in his advertisement.

That Jessica was going to engage in prostitution. Jessica was a minor then, and she is a minor today as we stand here. Not in dispute. That he took photographs of her to advertise her for sex. He told you his phone number. 347-815-9064. His e-mail addresses, redchaos826@gmail.com. Keyonnadoll@gmail.com. He told you it was his words on the ads. Each of the advertisements you saw was posted by one of those two e-mail addresses, e-mail addresses that the defendant said were his.

Also not in dispute, that the defendant prostituted Dana and Arielle. That he would take their money, put it in envelopes, and lock it away in safes that only he had access to.

There is also no question about the interstate commerce element from both the sex trafficking charges, One, Two, Three and Four, and the child pornography charge, Count Five. You heard extensive testimony about use of phones, computers, Backpage.com that the defendant used to run his prostitution business. You learned that the devices on which he stored his child pornography, the images and the video of Kaira, were on devices made outside the United States, which, of course, had to cross interstate lines to get here.

There are really only two things in dispute. Two things that you, as a jury, have to decide. One, whether Kaira

and Jessica were minors when the defendant sold them for sex. And two, whether the defendant, in trafficking Kaira, Dana, and Arielle, which he admits, used force, threats of force, fraud, or coercion. And the answer to those questions, the only answer supported by the evidence in this case, is a resounding yes. A clear yes.

Let's talk about why.

Let's talk about Kaira. There are three separate charges relating to Kaira. Two in Count One, one in Count Five. Sex trafficking of a minor, sex trafficking by force, threats, fraud or coercion, and production of child pornography.

Let's make one thing clear: The defendant recruited Kaira from a group home. He had sex with her, he took pictures of her, he posted advertisements of her. You've seen them. Kaira identified the defendant's apartment on Nostrand Avenue, and she told you that she saw five customers on the first day.

The defendant doesn't dispute this. He disputes two things. That Kaira was a minor when he prostituted her, and that he used force, fraud or coercion doing it.

Let's start with the first. Kaira was born on March 22, 1999. Here's her birth certificate. The defendant posted her on Backpage, sold her for sex under the name Pearlene. Let's look at those ads. Let's look at the time stamps on them, the creation date. Government Exhibit 400,

February 2, 2017; 401, February 13, 2017; 402, February 13, 2017. I can keep going. These advertisements were created in February. Kaira was 17. She didn't turn 18 until March of 2017.

A word on the Backpage data. As Forensic Examiner Uitto testified, about a year ago the website Backpage.com was taken down and the servers seized by the FBI. We spent a fair amount of time on spreadsheets, the object ID, creation date, last modified date, posting date, metadata, IP addresses. Here's the point. The Backpage data, the data, it's from the Backpage servers. It's the same data you heard Mr. Uitto testify made up the reconstructed advertisements. Everything on those reconstructions, every picture, every piece of text, comes from the Backpage servers preserved in evidence by the FBI. Preserved in evidence by the FBI in Pocatello, Idaho. Any suggestion to the contrary is flatout impossible. Any suggestion that the government manipulated this data, tweaked it to sink Mr. Kidd is absurd.

And those servers, the pictures and descriptions the defendant posted on Backpage selling Kaira and his other victims, here they are. This ad Kaira, that one of Jessica. One of Dana. These ads and everything in them, including the dates they were created, posted, came from the Backpage servers, completely independent of what was seized from the defendant's apartment, which I'll get into later.

Again, there is no question that the defendant posted these advertisements. You watched him on the stand yesterday as he gave the play by play. And on those servers, pictures and the descriptions the defendant posted on Backpage selling Kaira and his other victims.

Again, these ads, the ones with Kaira, the defendant posted them in February of 2017. She was 17 years old. You want to know what else was created February of 2017? The child pornography of Kaira. The defendant told you that he took the pictures, the video was stored on his computer and his hard drives. Just read the file path. Users Lloyd Kidd. Documents Chris Kidd videos XXX my collection vid 20170201.

He put the video in "my collection." He described it as XXX. The metadata from that video, the graphic video of 17-year-old Kaira touching her genitals at the defendant's direction, shows it was created on February 1, 2017. Again, Kaira was still a minor.

(Video recording playing)

MR. GUTWILLIG: Of course there were pictures too. Pictures that were taken in February of 2017. Pictures that were taken before her 18th birthday.

Where did the government find these images? On the devices in the defendant's apartment. It wasn't just one. It was on his computer, on another computer, on his hard drives. Five devices. Not just one. This wasn't an accident. Just

look at the file name. One device would be enough. You have one, two, three, four, five. All seized from the defendant's apartment. The data on five different devices, each belonging to the defendant. It's not wrong.

THE COURT: Mr. Gutwillig, will you take down the exhibit.

MR. GUTWILLIG: Yes, your Honor.

THE COURT: The exhibit on the screen.

MR. GUTWILLIG: But he didn't just keep these images on the computer, his hard drives, his phone. Defendant posted child pornography on the internet. It wasn't a secret. He used these images of Kaira, just 17 years old, to advertise her for sex.

And what's the creation date on that ad again? February 2, 2017. The day after he took the photos.

Ladies and gentlemen, that's three independent sources of evidence that all tell you one thing: That the defendant had already met and prostituted Kaira before February of 2017, when she was a minor. The images and video of child pornography on five different devices in the defendant's apartment, the ones sitting right there, they all have a creation date of February 1, 2017. The Backpage ads from the Backpage servers, February 2, 2017.

And of course, you have the testimony of Kaira. She told you in detail how she was prostituted by the defendant

when she was 16 years old. Do you remember what she said? It's right there in front of you. I was like yeah, I'm 16. And the defendant was like, you're lying. And he kind of left the conversation after that.

These three independent, entirely consistent pieces of evidence, provide devastating proof that the defendant made sexually explicit images and a video of Kaira when she was a minor.

It proves more than that. This wasn't just an explicit picture taken a month before her 18th birthday. The defendant was prostituting her when she was 16 years old and coming from a group home to do it. And by the way, Dana testified she saw Pearlene -- Kaira -- at the defendant's apartment when Dana met the defendant in February 2017. The same Dana who left for Guyana in April 2017. The only evidence to the contrary is the defendant's uncorroborated word that he met Kaira in April of 2017, right after she turned 18. Pretty convenient, and also proveably false.

The only reliable evidence, a massive amount of it, shows clearly that is not true. All that proves beyond a reasonable doubt that the defendant engaged in sex trafficking of a minor, Kaira. The evidence in this case, the evidence I just walked through, shows that.

The evidence also shows that the defendant sex trafficked Kaira by force, threats of force, fraud, and

coercion. The defendant told you that he -- I'm sorry. The defendant told you that he sexually assaulted her. That sometimes he wouldn't even ask. Kaira said sometimes, she would just wake up, and he would be behind me, trying to penetrate me.

Remember the defendant's own words from the fake YouTube video where he was playing a part.

(Video playing)

MR. GUTWILLIG: "Keep your eyes open so it's not weird." Defendant's own words. That's control, coercion, through sexual assault. Kaira's testimony is entirely consistent with the defendant's own words. The only character that Chris Kidd was playing in the YouTube videos was himself. There was not a difference between that world and the real one. It was the same.

Kaira also told you that the defendant choked her, because she didn't give him money from a customer before having sex with the customer. Because she didn't follow the defendant's rules. Think about that. He choked her because she didn't give him the money first. The defendant's money that he took from this minor victim for having sex. And after he got the money, after he choked her, she had to finish with the customer anyway.

It does not get any clearer than that. Choking someone is using force against them. Choking someone is a

coercive tactic against them. The defendant used force, he used coercion, against Kaira. That's Kaira, a 16-year-old runaway from a group home. Defendant had sex with her, unprotected, took explicit photos and videos of her, posted them online, sold her for sex, and when she didn't give him the money before she had sex for him, he choked her.

There is no doubt that, with respect to Kaira, the defendant engaged in sex trafficking of a minor and sex trafficking by force, threats of force, fraud, or coercion. It does not get any clearer. We can stop there. We could stop right there, after one victim, and the defendant would be guilty. He would be guilty of both charges in Count One and of Count Five. But there's more.

Count Two is sex traffic of a minor. Jessica. For this count, the only thing that's in dispute is whether the defendant prostituted Jessica. Whether she engaged in sex for money on his behalf. We don't even need to get into whether Jessica was a minor at the time the defendant prostituted her in 2017, because she is a minor as we sit here today.

The defendant knew this person. He knew her. He told you that. So did Aisha, so did Sabrina. Her birthday, March 18, 2003. She is 17 years old today.

Before we go any further, let's just make one thing clear. Jessica, Aisha, Sabrina, and another girl who was with them, Brielle, they all came from a foster care home in

Westchester. That's where they came from. That's where they came from to work for the defendant, and that's where they returned, just like Kaira came from a group home in Manhattan.

Here's how you know that the defendant prostituted Jessica. The defendant told you that he took these pictures of Jessica. Here they are. He identified them in the Backpage ad that he posted. He told you that Jessica was Domo.

Who else identified Jessica in the advertisement posted by the defendant? Aisha and Sabrina, because they were there too. Aisha testified that the defendant -- Aisha identified the defendant sitting in court. She pointed him out.

And Sabrina, Sabrina testified that she didn't recognize the defendant in the courtroom, because the defendant had hair when she knew him. "The only Chris I know have hair at the time." Think about the honesty of that answer. You saw Sabrina. She is a child. She knew the defendant with hair, and that's what she said. As soon as she saw the picture of the defendant with hair, she recognized him. Sabrina answered that question in the most literal way possible. She answered truthfully. And her testimony about Jessica, it also had the ring of truth. Sabrina told you that Jessica saw customers for sex while she was at the defendant's apartment. On the basis of Sabrina's testimony alone, the defendant is guilty of Count Two. But you have Aisha's testimony as well. Aisha testified

about two separate occasions where Jessica was advertised by the defendant on Backpage, had sex with a customer, and that Aisha saw with her own eyes Jessica give the money to the defendant.

The testimony on this point is entirely clear. At bottom, Sabrina and Aisha told you the same story, that the defendant prostituted the still underaged Jessica for money, that he advertised Jessica, and that she had sex with customers in his apartment.

Doing any of those things, at a time when Jessica was under 18 -- which she is today -- any of those things, is a violation of the law.

Aisha and Sabrina were consistent with one another in other ways as well. They also were consistent with the defendant's own words. Aisha described when she went from her group home to the defendant's apartment in Brooklyn, that the defendant brought her into his room, grabbed her wrist, and had sex with her without a condom, and then he took pictures. It's the same story Sabrina told. The same story the defendant told publicly in his recruiting ads. "A personal session with me." The defendant told you on the witness stand that the personal session that happened when he was physically attracted to a woman or girl who was coming to work for him. That these sessions were consensual.

But on this point, Aisha told you a very different

story. So did Sabrina. Why did she have to have sex with the defendant before she was allowed to see customers for him? "Because not every girl's vagina is qualified for the job." Who told her that? The defendant.

You have Aisha and Sabrina's testimony. That testimony is not just consistent with one another, it's consistent with the internal records. The advertisements with Jessica, Domo; and Aisha, Lizzy. They were created on May 18, 2017. Both of them. That data came straight from the Backpage servers. Defendant also told you that himself. And Aisha and Sabrina told you that after leaving the defendant's apartment, they went to Target. That they went to the Target on Flatbush Avenue in Brooklyn, a half mile from the defendant's apartment. You have their testimony on this point. You also have the video surveillance from Target. Look at the time stamp on the top left of the slide. It was taken on May 18, 2017, at approximately 3 p.m. It was taken later the day the advertisements with Jessica and Aisha were posted by the defendant. The same day. It's not a coincidence.

Aisha's testimony corroborates Sabrina's testimony. Sabrina's testimony corroborates Aisha's testimony. And the defendant's testimony that he took those pictures, posted those advertisements, it corroborates them both. And you've got the Target records to boot.

In Target, on that photograph, both Sabrina and Aisha

identified Jessica wearing the floral dress in the picture in front of you. They also identified Aisha, Sabrina and Brielle. Aisha and Sabrina used almost exactly same words in their testimony. They weren't coordinated.

To sum it all up, Jessica was a minor in 2017 because she's still a minor. Aisha's testimony proves that beyond a reasonable doubt, that the defendant sold Jessica for sex. So does Sabrina's testimony. The video surveillance from Target is just icing on the cake. There is no question that the defendant is guilty of Count Two.

Then you have Counts Three and Four. Three, Dana; Four, Arielle. That the defendant prostituted Dana and Arielle is not in question. The only issue in dispute is whether he used force, threats of force, fraud, or coercion in causing them to engage in commercial sex acts. It is beyond clear that he did. And before I walk through the testimony, before the proof that that happened, just pause for a minute.

You saw Dana and Arielle on the stand, right over there. Did it look like they wanted to be here? Did it sound like Arielle wanted to talk about how she started working for the defendant because she was afraid of losing her daughter? Did it sound like Dana wanted to talk about a sex tape that the defendant recorded in secret with a particular sex act that she was so scared, so ashamed for people to see, that she started working for the defendant as a prostitute?

You saw their raw emotion, the anger, the shame, the vulnerability, the frustration, the feelings of helplessness and powerlessness, in some instances minimizing the conduct, in some instances describing it like it happened to someone else. Like an out-of-body experience. All things Dr. Cooper explained. Find victims, intimate partner violence, social isolation, the cycle of violence. What you saw were two textbook examples of sex trafficking by force, fraud, or coercion.

Did it strike you that they were here just to tell lies to get the defendant? To make up a cascade of untruths in order to put him in prison? Of course not. That is not at all what their testimony is about.

Those witnesses opened up, they told you about some of their most intimate, most embarrassing, most difficult experiences in their lives. And that's why their testimony has the ring of truth.

Let's talk about Arielle. Why did Arielle go to work for the defendant? "I mean, I said beggars can't be choosers. And I needed the money, so I pretty much did as I was told." She was completely desperate when she walked in the door. She had lost custody of her daughter, she didn't have a place to live, and she didn't have any money. Just like Kaira, just like Jessica, Aisha, Sabrina, Brielle.

It wasn't a coincidence that Arielle was desperate.

It was a pattern. And Arielle's testimony conflicts with the defendant's testimony that all these women and girls just brazenly walked into his apartment so they could earn money. That they also willingly started working for him so they could get paid.

These women were in difficult circumstances, unthinkable circumstances. Often desperate, and the defendant took advantage of that vulnerability.

Arielle told you about working for the defendant. She saw customers at any time of the day or night. Sometimes she was sleeping when customers wanted to see her. Sometimes she was sick or tired. This is exactly the type of vulnerable victim that Dr. Cooper, the sex trafficking expert, talked about. She had nowhere to go, no choice. The defendant had her exactly where he wanted her. She told you about threats. That asking for money from the defendant, money she had earned from sex trafficking on her behalf, resulted in a vicious rebuke. "Listen, you little cunt, don't make me slap the shit out of you."

(Continue on next page)

MR. GUTWILLIG: That's what she said. That's what he told her.

Ariele told you about her fear of violence. She mentioned a distinctive clicking sound. By the way, Dana told you she saw a gun in the defendant's apartment, too. You have Dana's testimony, you have Ariele's testimony. You know what else you have? You have the gun seized from the defendant's apartment, the one that was seized from the safe that only he had access to.

Of course you have the threat about what Ariele feared most: Losing her daughter. The defendant knew this from the very beginning. He used it so that Ariele would work for him. He explained it. He exploited it. He said -- Ariele said, Ariele testified to this, he said that if I go to the police, he would have six of his boys testify in court that I'm a known prostitute and that I would never see my daughter again. He took her worst nightmare, her greatest vulnerability and used it to threaten her, to force her, to coerce her to engage in prostitution on his behalf. As I expect Judge Marrero will instruct you, abuse or threatened abuse of legal process is a means of coercion for the purpose of sex trafficking.

Then there's Dana, the defendant's wife, the wife who he sold for sex hours after they got married.

There's the envelope. This is the envelope he used to keep the money that she earned from sex. Like the gun, kept it

locked away in a safe. And how did the defendant get Dana to work for him? Blackmail. Another vulnerable victim. This one from a foreign country. Romanced by the defendant, another technique sex traffickers use to recruit victims, just like Dr. Cooper told you.

He secretly videotaped her. He videotaped her doing a particular sex act, one that was not described in court, one that the defendant showed Dana that he threatened to upload to the internet for everyone to see if she didn't do what he wanted: To engage in sex for the defendant's benefit; all kinds of sex, BJs, bare blowjobs, oral sex without a condom, back door, anal sex and brown showers, which I won't even describe.

You saw Dana. She was clear that she never wanted to do any of those acts. Dana testified that when the defendant advertised her, he advertised her for those acts as a punishment. "When me and him get into an argument, he would write up I'm doing back door, I'm doing unprotected sex, BBJs and so forth."

And if she didn't want to engage in prostitution at all, the defendant had her paying his bills, internet, light, gas, his bills, in imaginary debt for not engaging in prostitution for the defendant, or not getting him money for sex. She was forced into it, and she was forced to continue. And this is entirely consistent with Dr. Cooper's testimony.

She explained the concept of debt bondage, how pimps like the defendant use that technique to control victims, that in the end, the victim will end up owing the defendant, almost always, almost always working off imaginary debt, always forcing the victim to come back to the pimp, to the defendant.

This advertisement makes clear, the one in front of you, this advertisement makes clear that the defendant followed through on his threat, that he posted pictures of Dana advertising her for sex with her face unblurred, perfectly consistent with his testimony.

There's physical evidence backing this up. When Dana and the defendant got into an argument about the defendant unblurring her face in the advertisements, he literally punched holes in the door as part of the fight.

The defendant claimed that he never posted these pictures with Dana's face unblurred. He would have you believe that even though he took those pictures, as he admits, he never posted them to BackPage. That is simply impossible. Every piece of data, picture, text, IP address, creation date, posting date, everything came from the BackPage servers maintained by the FBI, including the photos of Dana with her face unblurred.

Of course, there was physical violence, like when the defendant would bend back Dana's fingers so hard she could barely close her hand, like when he would shake her awake so

she could meet her customers, throw water on her to wake her up, then he would force her to have sex with them.

You have seen and heard a lot of evidence, testimony from the victims, from Kaira, from Aisha, from Sabrina, from Ariele, from Dana, envelopes with the girl's names on them, the gun, advertisements the defendant posted on BackPage, the graphic descriptions of sex, graphic descriptions of what the defendant was selling the girls to do.

What you have seen and heard, that is Chris Kidd's world, the real one, the world where Chris -- the world Chris crated was not a YouTube channel, it was a world where he sold women and girls for sex, where he choked Kaira because she had sex with a customer before giving the defendant the money, where he brought four minor girls from foster care, including Jessica, Sabrina and Aisha, to his apartment to sell them for sex one at a time, two at a time, unprotected sex. The strangers could take their pick after, of course, the defendant tried them out first.

He threatened Ariele that she would never see here daughter again, and he secretly recorded a graphic sex tape to force Dana into working for prosecution for him. This was Chris Kidd's world. This was his world. This was the defendant's world, the one that he created in the real world, a world of fear, intimidation, and violence. It was a world where you did what he said.

It was exactly as he described it. In the defendant's own words: I'm located at a very nice apartment in Brooklyn. I would take pictures of you and edit them. I would also take care of posting you and promoted you. There would be a personal session with me. Once I see how you do with in calls, I would be open to do any out calls with you out of town. Submissive women only.

You know what the defendant thinks a man is? He thinks it's a ruthless pimp. Serious female. You heard the defendant say it himself in a public YouTube video for anyone to see. I don't deal with dominant women. I'm dominant. If you're not going to submit to me, then fuck you. That's what he said.

You know how he saw these women and girls, just listen.

(Audio recording played)

MR. GUTWILLIG: From group homes, from foster care, desperate to support a child, blackmail, the defendant targeted these women and girls because they were vulnerable. But the defendant, he underestimated them, because they walked in here and they told you what happened. They told you their stories, and that, that is what this case is about. Their resilience, their courage, their stories, the evidence corroborates these stories, the defendant's own words corroborate these stories.

Hold Lloyd Kidd accountable. Reach the only verdict

that is consistent with the evidence, the truth, and the law, that the defendant is guilty.

THE COURT: Thank you. Mr. Margulis.

MR. MARGULIS-OHNUMA: Judge, we need a minute or two to set up the technology, and I request a bathroom break if we could take five minutes.

THE COURT: All right, five-minute break.

(Recess taken)

THE COURT: Thank you, be seated. Welcome back.

Mr. Margulis.

MR. MARGULIS-OHNUMA: Thank you, your Honor. May it please the Court, my worthy adversaries, my esteemed, colleagues, and most of all you, ladies and gentlemen of the jury. I want to repeat one or two things Ms. Medley said at the beginning of this case, which is we know you all kept an open mind. Some of this evidence is very difficult to look at and get your head around, and that what we're here for is to make sure that Lloyd Kidd gets a fair trial, which in our system means the government has to prove every element of every count beyond a reasonable doubt. And that's the most important thing that we ask you to keep in mind as you go and deliberate in the jury room.

So how does this case begin? It begins with an investigation what was referred to by the witnesses as a raid on Church Avenue. And in that raid the agents involved, their

team, gathered each and every conceivable electronic device you can imagine, not only from the apartment itself, but from the safes that they found in the apartment.

So what we have in front of you -- and I have taken some of this stuff out and I will try not to belabor it, but we have two computers, one that was in the closet, one that was at the desk, it was in the pictures, dozens or almost two dozen electronic devices in all, hard drives, back up drives, phones, SIM cards, you saw it all as it came out. And that's really the government's key corroboration for their claims. That's where they found things that they say back up what the witnesses are saying.

We heard Mr. Kidd's words at the very beginning of Mr. Gutwillig's summation, and I certainly don't blame him for starting with them. I think we all cringed when we heard those words. Those words are ugly. But we also heard a tape that was found, a 2013 tape that was found on one of the devices. Also ugly words. As Ms. Medley told you at the beginning, words not of a man, but of a persona, a caricature himself.

What we heard on the witness stand, I very respectfully submit, from Mr. Kidd was the truth, who was he really is and how he really treats people. And how do you know that? Well, you know that because he admitted almost everything, didn't he? And the government picked up on that. He admitted to running an in call spot. He admitted to posting

ads of women on BackPage. He didn't have to admit to any of that. He had a right to remain silent and you couldn't have used that against him. But no, he took the stand and he told you. The government, why they didn't they get into it? They had all kinds of electronic links showing it was him who posted the BackPage ads, that his phone number was used, his email was used. Okay, yeah, no problem, I did all that. But then he went on to describe truthfully what he knew and how he treated the women involved.

So moving on in the story, at the day of the raid they got not only all of these items, but they found Dana and Ariele and another person who is an adult person in the apartment. And then after that, Dana and Ariele became depicted themselves as victims. They weren't underage. No one underage was found there, and the accusations came up later.

So what don't we have? We don't have other kinds of investigations. And the judge will -- investigate techniques. The judge will instruct you that they're not required to employ any particular investigative technique, but in this case wouldn't you like to hear wiretaps? Wouldn't you like to see the text messages used to recruit -- allegedly used to recruit underage girls? Wouldn't you like to have calls that the victims might have made to defendant? Wouldn't you like to hear testimony from alleged accomplices or have some surveillance? Wouldn't you like to see credit cards or bank

records that corroborate? None of that is present in this case.

As far as surveillance -- and I think I may get back to this, but the women who were present when he was arrested testified that there was a camera in Mr. Kidd's living room. That camera would have depicted most of the conduct under discussion when everything happened in Brooklyn. And the camera they said also fed onto his cell phone. I will not try to take it out, it's Government Exhibit I think 100. It's his actual cell phone, they got his cell phone. Wouldn't you expect to see some content on there that would be corroborative? And it's not there.

Let me go -- and my slide looks a lot like Mr. Gutwillig's, because he's a very good lawyer. Let's walk quickly through the five counts.

Count One stands alone, because with respect to Kaira Brown you have to find unanimously either that she was a minor who was caused to be engaged in commercial sex acts, or that force, fraud or coercion was used to cause her to engage in commercial sex acts. And you have to be unanimous on which of those two, and the judge will explain that to you, but you have to all agree which of those two or both apply.

With respect to Jessica Bonilla, and just to be clear, we have not heard from Jessica Bonilla. That's I think the main person in the investigation you would want to hear from in

this situation. I'll talk a little bit about that in a moment. With respect to Jessica Bonilla, she's not -- there's no accusation of force, fraud or coercion, as there with respect to other alleged victims. It's strictly whether -- and our contention is that she was not actually used in any commercial sex acts and there's no proof of that.

So with respect to Count Three and four, they have to prove beyond a reasonable doubt that force, fraud or coercion was used to cause those individuals -- to cause Dana McLeod and to cause Ariele Palopolo to engage in commercial sex acts.

And with respect to Count Five, it goes back to the production of child pornography and when those images were actually taken.

So this is just to summarize the points that are in dispute. So with respect to One, Three and Four, those are the counts that require force. You have to ask yourselves, did the force, fraud or coercion cause a commercial sex act that the victim would not have done otherwise that was done against her will? That's what you really have to look at.

THE COURT: So, for example, when Ariele says I was desperate, I needed money so I came to the home, and then gets in a dispute over someone's soap, and even accepting her testimony as true, and is hit or mistreated because there was a dispute over soap or threatened because there was dispute over soap, is that causing her to engage in a commercial sex act?

There has to be a causal nexus. As you review the testimony, I want you to look very carefully whether there is causation there beyond a reasonable doubt. And that applies to all of Counts One, Two, Three and Four.

For Count Two, I think again the government characterized it accurately, our defense, which is that Jessica -- he never actually went through with respect to Jessica Bonilla, that he knew as Diamond, that he never actually posted it. We'll get to the BackPage data in a moment. With respect to Kaira, our contention is there's no proof beyond a reasonable doubt that they met prior to April of 2018 when she was 18 at the time.

So if you are to find Mr. Kidd guilty of any one of those counts, you next have to look at whether -- and the judge will instruct you on this, whether -- and I agree, of course, with Mr. Gutwillig that what the judge says is controlling on the law. This is what I expect him to tell you: I expect him to tell you that for all the counts you have to find an act in furtherance of the crime happened here in the Southern District of New York, Manhattan or Westchester, not in Brooklyn. And part of the issue here is that these are Brooklyn crimes. I don't think there's any evidence in this record that says that Mr. Kidd did anything in the Southern District of New York that's credible evidence.

So if you find, for example, that when the three girls

came, if you find that that actually happened and they took the train and the subway to Brooklyn, and they arrive in Brooklyn, and that's when the crime takes place, as opposed to him going and picking them up, then the government has not proved by a about preponderance of the evidence that an act in furtherance of the crime took place in this district, in the Southern District. And yeah, it's a legal technical defense, and you can hate Mr. Kidd all you want, but if the crime actually happened in Brooklyn, the government is required to bring the case in Brooklyn.

So with respect to Counts One and Five we're on, Government Exhibit 400 of course is their strongest evidence. Government Exhibit 400 is an exhibit that was made up by Erik Uitto. He took the 40 terabytes of data in BackPage, that's what he told us, and he picked and chose and found stuff that he, in his opinion as a law enforcement agent, not as a person from BackPage, went together based on what he saw.

I'm going to try, I don't know if I can succeed, in showing you Government Exhibit 450A, which is supposed to tie these things together and be the basis for these exhibits.

So before I get into that, though, we know that Kaira Brown came to Mr. Kidd, which he admitted, not at the time that the BackPage ads were made or at the time stamps on the videos, because she was not -- her locations at those times were known. And how do we know that? We know that from the witness from

the Good Shepherd Services who told us that when a child is in foster care, their movements are tracked.

She was 17 in February, she was still in foster care in April, and her movements are tracked, so they're responsible for knowing where she is. She's AWOL at certain times, and what I have done is try to line up the times and show them against the reconstructions of Government Exhibit 400 on the lower right of your screen.

I will talk more in a minute about the unreliability of these dates, because I don't think any of the dates are particularly reliable in any case, but here we have a square conflict.

So Government Exhibit 450 is a compact disk. I want to make sure you understand. I won't pull it out, but it's a compact disk, and it has on it a huge Excel spreadsheet which you have never seen. You have seen snippets that they have pulled to show you the basis for their conclusion, but I urge you to ask for a laptop and look at the whole thing.

I will try to show it on my laptop. There are many columns that Agent Uitto just does not know what they are because he's not the BackPage IT specialist, he's a law enforcement officer who grabbed the data and tried to interpret it, but it's just an interpretation.

So there are several dates, creation date, modified date, last edit user, if you look at -- I had it written down,

if you look at Government Exhibit 400, I think, if you look at this creation date of 2/2, it's line 10. As you go across -- and this is a copy, by the way, from the CD. You should look at the actual CD because we all know computers can be fudged, dates change all the time so easily, but I urge you to look at the actual CD that is actually in evidence.

If we go across here, there's numerous dates for different things, creation date, last modified date, expiration date, sponsor release date, sponsor expiration date, and more. As you can see for some of them, it looks like the data got corrupted where dates are not lining up in the right columns on the spreadsheet. You will have to look at that on the Government Exhibit 450A.

In any event, in terms of Pearlene, if you look back and forth with where she was -- sorry, Kaira Brown, if you look back and forth where she was by records left by the foster care agency, and I transposed them on my own reconstruction there, so feel free check to it, but you will see as of the creation date listed in the BackPage data, she wasn't AWOL, she was at Marion Hall where she was supposed to be. She didn't go AWOL until the next day -- sorry, two days later, until February 4, 2017 at 3:11 p.m. This was supposed to have been created two days earlier, so how could it have been created if the foster care agency was keeping track of her movements?

After February 4th we don't know where she was or what

she was doing, and there's a number of dates and there's a little bit of overlap, but it seems to be the posting date and not the creation date, if you look at this reconstruction, that the data -- and you have to go back to line 10, I think it was, of Government Exhibit 450A. So it's tricky, but there's a lot that these reconstructions could say that the government's reconstructions aren't telling you, and one of them is that Kaira Brown was not in Brooklyn on February 2nd, 2017.

So let's talk about when and where she was. The government -- the testimony was, and the government's contention is that she kind of worked on and off for Mr. Kidd over a two-year period from 2015 to 2017. That's just blatantly false. How do we know? She testified that she only worked out of -- sorry, my colleague points out another anomaly in the data I'm just going to show you, I apologize for skipping around.

So because we don't have somebody from BackPage, we don't know what these dates mean. We don't know why expiration date would be later than the posting date, for example. If it is what it seems like, if it's expired already, how could it be posted a day later on 2/12? So look at that line 10 very carefully and see if you think it's reliable.

So back to where I was the. Kaira Brown testified with absolute clarity that she only worked over this period out of a spot on Nostrand and she started in the spring of 2015.

That's impossible because Mr. Kidd didn't have a spot on Nostrand until April of 2016. Mr. Kidd testified to that. Again, he testified truthfully, and he was able to corroborate it with a piece of mail that went to his house in his name on Stanley Avenue at the end of 2015. And that's that -- I'll have to get the exhibit number for you, but it was that Chase -- it was the letter from Chase which he offered into evidence. He didn't end up offering leases into evidence, but he did testify that he moved to Norstrand only in 2016, so it's impossible -- what Kaira Brown is saying is impossible because his spot on Nostrand didn't even exist at the time that she claims she worked there.

And by the way, you can't confuse them. This is a schematic of the map. If you look at the upper right, they're way there by the airport, that's the Stanley address, it's almost Queens, where the one in the bottom marked April 2016 is Nostrand Avenue. And I think Mr. Kidd testified it's about a 25-minute drive from one to the other.

So that's Pearlene. Let's talk a little bit about Jessica Bonilla. So the interesting thing about Jessica Bonilla is she didn't testify. They gave us a birth certificate and had some testimony from some of her friends. Is that really proof beyond a reasonable doubt that these particular crimes happened? Well, I think there's reasons she didn't testify, that she have not have been a reliable witness

for reasons that her friends told us about in their testimony.

So for example, she used a fake name, and no one actually knew how old she was. We all thought she was 16, Sabrina tells us, that's the age she gave us.

Does Jessica go by any other names that you know?

Diamond, that's how she introduced herself to us.

So she's lying to her friends about her age. We found a birth certificate from Virginia for a person named Jessica Bonilla. Without bringing her to court and finding out if that's really her, or a relative, someone who really knows her, as opposed to someone who has been in a group home with her for a little while, is that proof beyond a reasonable doubt that we have the right person?

It also appears from the girls' testimony that Jessica was something of a ringleader of this group, that she was recruiting people herself into prostitution. That's what Aisha Goncalves told you, that she was aware of that, and she brought these girls, who are not the subject of Count Two, and that's very important, that she brought them to engage in prostitution at Mr. Kidd's place.

So even if you think that Mr. Kidd caused the other girls who actually testified -- when I say "girls," I mean the two minor victims, or they're not minors when they testified, but minors when -- they allege they were minors at the time it happened. Even if you think he's guilty of that, those counts

aren't charged. You can't find him guilty of Count Two unless you believe that he caused Jessica Bonilla herself to engage in commercial sex acts. Again, that's a technical defense you might not like very much, but there are some limits on the government's power here that you swore to uphold.

So what about the BackPage ad for Jessica Bonilla? As I think the defendant pointed out to you, Mr. Kidd pointed out to you when he was testifying, for the ad on the left, Government Exhibit 421, the name that Jessica's friend told us was her is Domo. I'm not sure how you can tell that, but if I recall correctly Mr. Kidd admitted it anyway that that was her. He didn't have to admit that that was her, that it was a picture that he took, but he did, because he was telling the truth.

That date, the date posted -- and again, starting with the ad on the left, the date posted is 5/21/2017, which is three days after the target videos. So you're posting an ad with this person, but she has fled with her friends after her friend got arrested at Target. But so that makes no sense at all. The name of Domo does not appear in the ad. It makes no sense at all. This BackPage data is totally unreliable. You cannot count on it.

Same thing with the one on the right, which is Government Exhibit 419. You see Scarlet, who the friends claim was Jessica Bonilla. By the way, did we ever see a photo ID

for Jessica Bonilla? Did we ever see a driver's license or a benefits ID of any kind that would associate the name with the face? You really don't know who this person is, and we don't know what age they are because that birth certificate doesn't have any kind of unique identifier, it doesn't have a baby footprint or something like that that could be traced to a person 14 or 18 years later to see who that is and how old she actually is.

The age given in the ad is 26 at the time. That's the age that's on the metadata. We don't know what that means. I think I got into it a little with Mr. Uitto about where that comes from, and he said it came from users. I don't know how to dispute that, but that's an assumption, he's not from BackPage, and we don't know.

The point Mr. Kidd made on the stand, though, is in this one the ad is for Peaches, who is Dana, actually, and doesn't say anything about Scarlet, the other person advertised there, who he knew as Diamond and who the government is now telling you is Jessica Bonilla.

But I suggest to you that all of that amounts to reasonable doubt as to the age and whether these ads were actually posted for her by Mr. Kidd.

Here's a quote from the examiner about whether or not these pictures were posted that corroborates what Mr. Kidd is saying, which is that he took the pictures, he uploaded them

but he didn't post them because they decided not to go through with it. She didn't actually want to engage in -- she didn't actually agree to engage in any -- I don't want to say "agree," she didn't actually do any commercial sex acts and the ads weren't actually posted.

And the government has presented no evidence to refute that or show they were actually posted. No one has ever seen an ad of Jessica.

As you sit here today, when did you get assigned to case?

I have been doing extractions from the servers since April, several months.

So as you sit here now -- I'm asking the analyst Uitto -- as you sit here now, having prepared for several months, you can't tell one way or the other whether any of these pictures were actually ever posted, correct?

With the data in front of me, that's correct.

So moving on to the testimony of who are claimed to be Jessica's two friends or Diamond's two friends, it's inconsistent about how they got here and about what happened. So Aisha Goncalves told us that when they call all came together that she, Jessica and Sabrina went to 125th Street on Metro-North and he picked them up from 125th Street. I suggest, respectfully, that's pretty convenient, right? Because the government needs to show by preponderance of the

evidence an act that took place in Manhattan, and going to pick them up would satisfy that if it were credible. But it's not credible, because Sabrina Misere contradicts it.

I'm not saying Aisha lied on purpose by saying that, I'm saying it's not clear from this record sufficiently that there was any act that took place in Manhattan.

So Sabrina's testimony on this is you didn't take a Metro-North train to 125th Street?

We had to take Metro-North in order to come down from upstate. But then she goes on to say: Did you take the subway from the train station to get to Brooklyn? Yes. Nothing about being picked up in Manhattan.

And this corroborates -- Sabrina corroborates Mr. Kidd's testimony. He says that he didn't pick her up, and Sabrina was absolutely clear that he didn't pick them up in the four-door sedan that was described by the other witness and only by the other witness, because the other witnesses described Mr. Kidd's car as a Jeep, if I recall correctly.

So the other thing is it's not clear that they were describing the same location when they testified. One place, from Aisha's testimony was 30 minutes away from the Target where Sabrina was arrested, 30 minutes by bus. The other -- Sabrina's testimony was that it was a place ten minutes away from Target by walking. So we're talking about a real disconnect as to where the location of the apartment they were

would have been. So there's contradictions about how they got there and contradictions about where exactly it was.

Here's the reason for the confusion: The reason for the confusion is -- and I want to say this very delicately -- it appears from the record that these girls were victimized by multiple individuals, and that there was another individual named Red out in Brooklyn who may have victimized them, and there's confusion over what is going on and what happened.

Did Jessica ever refer to anyone else by the name of Red?

Yeah.

Who was that individual?

Some other guy.

Some other guy? Did you know him?

No.

Did you ever meet him?

Yeah.

You met him?

Yes.

Does he also live in Brooklyn?

No.

Where does he live?

In Queens.

How many times did you meet him?

One time.

Do you know if he was also involved in prostitution?

Yeah.

So we have another person that goes by the name of Red who is also involved in prostitution and who they have also met outside of the facility they came from.

And then there's the identification of Chris, and I think Mr. Gutwillig did a good job of explaining, if we look at the testimony again.

Would you recognize Chris if you saw them again?

Yeah.

Looking around the courtroom, do you see Chris? And the answer was no. The Chris I know have hair at the time. And they press the point, she stood up and she still couldn't identify him, she could identify him from that photograph because there's confusion about Chris, Red, and other people that were working in sex trafficking that they may have interacted with. So that's it for the two child victims.

Let me move on to the two adult victims, and they're really a different -- present a different set of problems. There, again, Mr. Kidd does not deny working with them out of his in call spot in Brooklyn. He denies mistreating them. And I would say that the government has not proven beyond a reasonable doubt even if he mistreated them, or really more importantly, did any mistreatment cause them to engage in commercial sex work. These were individuals who were engaging

in commercial sex work of their own free will, that they weren't coerced and they weren't defrauded, and they certainly weren't forced. Let me get into why and what the support is for that.

So one reason is that Dana is not a reliable witness, and she's not a reliable witness in the same way that the BackPage data isn't reliable, because she was away in Guyana for a lot of this time period. And according to -- and again, I don't know if it's the BackPage data or Dana that's being untruthful about this or inaccurate about this, but according to the BackPage data, she -- Dana is away at the time that one of the ads involving her was created.

Now here's a problem. You're looking at reconstructions, you have to go back and look at the spreadsheet, and if the time were permitted I would have prepared it for you in much more detail, but I can do it now orally, and as you go and resolve questions, I hope you look at Government Exhibit 450A in evidence, which is a disk with a spreadsheet.

So the government's reconstruction said Government Exhibit 413 has a posting time of October 22nd, 2017. Well, she came back on 9/11. That makes sense, that's Dana and she's there and they're doing it, they're posting her for commercial sex work. But if you look at the spreadsheet at the underlying data, you will learn that there's a lot of other dates

associated with that ad. Again, I will look real quick for the line number.

If you look at line 16 of Government Exhibit 450A in evidence, you will learn that there's a creation date of July for this ad and that's squarely -- we have her passport, she brought it to court, that is squarely within when she was in Guyana, that she left the United States just before her visa expired on April 18 of 2017 and she came back on a tragically easy date to remember, September 11, 2017.

So in July she certainly wasn't engaging in commercial sex work here. Now do I know whether that's because the BackPage data is unreliable or whether Dana is unreliable? I don't, and you don't have to resolve that. What you do have to do is determine whether there's a reasonable doubt as to any element of the government's case.

One moment, your Honor.

(Pause)

MR. MARGULIS-OHNUMA: Now what one could do is one could create reconstructions that use the creation dates instead of any of these other dates that are listed on this spreadsheet. And again, if you went to line 16, then that would have put the creation date -- would have put it squarely contradicted by the passport. So they didn't do that. They used -- for this reconstruction they use the posting time, which was in October, so they wouldn't have that contradiction.

So again, talking about Dana a little more, there's a few things to know about Dana. First of all, they're lawfully married. They're still lawfully married. Is it a great marriage? Doesn't seem like it. No one is holding it up as that. Is it a little cynical? Yes, it's a little bit cynical on both sides. He told us he wanted money out of the marriage. And she tried not to tell us, but we know why she got married, she got married because she would like to stay in the United States, which makes sense, and her testimony disputing that really doesn't make any sense at all.

There's also other unreliable testimony from Dana. She had trouble getting her story straight about where they met, and that's because she is lying about where they met. They met because she wanted to willingly and voluntarily engage in commercial sex work, so she answered one of those ads on BackPage with the pictures of dollar bills saying look, you can make money if you answer this ad. That's what led her to Lloyd Kidd. She doesn't want to tell you that. I don't know why, probably because she is embarrassed and ashamed, and I certainly don't blame her for that, but it does go to the question of whether she was caused by Lloyd Kidd or bad things Lloyd Kidd did to engage in commercial sex work.

So the problem with that is she doesn't have a story that makes any sense at all for what she was doing. And you can look at her passport, we made a copy and we have it

available for you. From October when she came to United States until February when she met Lloyd Kidd she kind of said she was hanging around with her aunts and gathering supplies for her business in Guyana. Does that make any sense, and it's a three-month vacation away from her salon in Guyana? It really doesn't. It really corroborates what Lloyd told you, that she met him because she wanted to engage in commercial sex work over BackPage, and she stayed with him because she wanted to get married and she wanted to stay in the United States.

So she disassembled on this, meaning she couldn't get her story straight. She said -- I don't know why I struggle with this, but she said she met him on Pitkin, he rolled up on her, flattered her, and it was just romance. Very far fetched. Very far fetched. And the proof is she couldn't get it right. Even in court she said, "So when I met him on Utica," and then she went back to Pitkin. Pitkin and Utica aren't anywhere near each other. I didn't do a map, but they're not near each other, and she was very clear she knew the difference between the Pitkin and Utica.

Then we have the stipulation we read into the record and signed by the government. I didn't give you guys the signed version, but that's Defense Exhibit M in evidence, and the stipulation is that we agree that the notes of when Dana met with the FBI she told them Utica, here she insisted on Pitkin. She can't get her story straight because she's not a

reliable witness because she has an interest in the outcome of what is going to happen here. So I'm asking that you accept Mr. Kidd's version, which is that she responded on page 650 of the transcript to an ad on BackPage and didn't meet on Utica or Pitkin.

THE COURT: Mr. Margulis, five minutes warning.

MR. MARGULIS-OHNUMA: Thank you, your Honor.

So Dana's claims are untrue. One way we know that is she lived together with Ariele, the other person that was present at the arrest. They lived together when -- at the apartment over the last six or eight weeks or couple of months. And in all that time Ariele never saw Mr. Kidd mistreat Dana at any time.

Her story is exaggerated. I'm going to rush now, but the purpose for that exaggeration is to get an immigration benefit. She couldn't get it through marriage, so she's getting it through the continued presence program, which is available only to victims of sex trafficking. I'm not quibbling with the program, what I'm quibbling with is her credibility, that she is doing everything that she can to stay in the United States. I hope she is successful, but it undermines -- it's the motivation for her to exaggerate these claims, because it's not enough if you're engaging in prostitution of your own free will, that's a crime in New York State. If you're a victim of sex trafficking, that's totally

different. So she has a huge incentive there to not to lie altogether, but to really exaggerate the acts that were supposedly undertaken.

So let me get -- I'm going to finish with Ariele Palopolo, and with Ariele it's a classic case of the government charging conduct that does not rise to the level of causation, of causing commercial sex acts, and I alluded to this before. All of the disputes that Ms. Palopolo described and the upsetting behavior that she described were about things other than working. She wanted to work more, and that testimony is there. I don't know if I made a slide on it, but she was very clear that she wanted to work more, not less. She didn't allege that Mr. Kidd did anything to encourage or force her to work more, to do more commercial sex acts. The disputes, the anger, the force, fraud and coercion was related to things going on at the house, disputes over handling of people's stuff. And she admitted that at page 440 of the transcript.

So that's a lot of detail, there's a lot of stuff here. At the end of the day we're asking you to do something that is really, really hard, seeing what you are seeing and hearing what you heard. His statements on YouTube are repulsive to anyone, there's no question about that. The government was brilliant to read them into the record when they began their argument. But in America we don't punish people for words alone, we punish people for acts and based on

evidence. And a critical assessment of this evidence shows that none of the counts rises to proof beyond a reasonable doubt, and you must acquit Mr. Kidd.

Thank you very much.

THE COURT: Ms. Bracewell.

MS. BRACEWELL: Good morning, ladies and gentlemen.

Lloyd Kidd is facing a mountain of evidence. Defense counsel just spend his closing argument trying to distract you from that evidence.

MR. MARGULIS-OHNUMA: Objection.

THE COURT: Overruled.

MS. BRACEWELL: Because if you focus on the evidence, if you consider the evidence without distraction, there could be no reasonable doubt that the defendant is guilty. The evidence is consistent, it's corroborated, and it's overwhelming. Five different victims, five, that tell remarkably similar accounts of the defendant's rules, his procedures, his way of controlling the money, his way of controlling the apartment, his way of controlling them.

Records from BackPage showing prostitution ads posted by the defendant's accounts, accounts he admitted were his with images of the victims, records from the defendant's phones and computers and hard drives showing some of the same images of the victims, the minor victims' birth certificates, even the photographs of the walls of the Nostrand Avenue apartment

showing where Dana dodged out of the way of the defendant's fist.

(Continued on next page)

MS. BRACEWELL: (Continuing) Defense counsel doesn't want you to look too hard for this evidence.

THE COURT: Mr. Kidd, please put your hand down. You're distracting.

THE DEFENDANT: Your Honor, this is very important.

THE COURT: I will not listen to you.

Ms. Bracewell.

MS. BRACEWELL: If you focus on the facts, if you focus on the evidence, his client is done. So defense counsel is trying to cloud your view --

MR. MARGULIS-OHNUMA: Objection.

THE COURT: Overruled.

MS. BRACEWELL: They want you to focus instead on the defendant's fictional YouTube persona and about why the victim can't be trusted. About the types of evidence that you have, and the types of evidence that you don't have. They want to put the government on trial. They want to talk about the government raid.

These are distractions. These are distractions from the facts and the evidence.

The defendant's response to overwhelming evidence, you heard it straight from him. It is as simple as it is audacious. A conspiracy against him, witness after witness who took the stand was lying. Their testimony was false, their records were doctored.

The defendant is arguing he was framed, that he is the victim of some ongoing conspiracy, because there's no other response to the mountain of evidence that you have seen accumulating over the last week.

THE DEFENDANT: You tampered with evidence, and he's aware of it. He saw the pictures. He knows about it and didn't point it out.

THE COURT: Mr. Kidd, if you continue disrupting, I may have to ask the marshals to take you out of the courtroom.

MS. BRACEWELL: Let me make one thing first totally clear. The defendant has no burden. As Judge Marrero has already told you and will tell you again, the government has the burden to prove beyond a reasonable doubt, and we've met that burden here. We embrace that burden. But when the defense makes arguments, you can and you should consider those arguments. You can consider whether they make any sense, and here, I submit, they don't.

I'm not going to address this morning all of the arguments that were just made. I'm not going to address, for example, whether there is any significance to whether Dana met defendant on Utica or Pitkin. I leave that in your hands. But I'm going to address the main arguments.

So let's start with the defendant's claim of conspiracy against him. The defendant took the stand and told you the government fabricated evidence against him. He told

you about falsified Backpage data, that the dates for certain ads were wrong, and that certain photographs -- the inconvenient photographs, for example, of Jessica Bonilla -- those were never posted. The defendant insinuated that the evidence from his own devices, those were also compromised. Files were moved around, metadata was altered.

But what does his claim of conspiracy require? It requires that the witnesses who testified in the government's case, who you observed, perpetrated this conspiracy. That witness after witness, who got up on the stand, and took an oath to tell the truth, then lied. Witnesses like FBI Examiner Erik Uitto who testified about the Backpage data that he gathered while in Idaho.

If you believe the defendant, Agent Uitto lied, falsified the creation dates, and he actually got some of the photos in the ads from the defendant's computers here in New York, even though they were never posted on Backpage.

Or FBI IT analyst Porsche Brown who performed the extractions on hard drives in the computers, who described in meticulous somewhat painstaking detail how she got the data from each of the devices. She testified about where the multiple pornographic images and video of Kaira were recorded and when they were recorded. If you believe the defendant, Ms. Brown also had to have moved data around carelessly and taken the stand to lie about it.

MR. MARGULIS-OHNUMA: Objection, your Honor. It is not rebuttal.

THE COURT: Sustained.

MS. BRACEWELL: But Uitto and Brown were law enforcement witnesses. They testified and introduced records. They had a passing connection to this case. Why would these witnesses generate false reports and records? When you consider Erik Uitto and Porsche Brown's demeanor on the stand, this is simply preposterous.

As defense counsel just acknowledged, Erik Uitto didn't want to overstate his understanding of particular data fields in his unwieldy charts. A witness willing to falsify data but careful to qualify what it means, that's just not likely.

And defense counsel came back again and again to the dates of the Backpage records, that we don't know what they mean. Even accepting that those records are not fully explained, as Uitto himself admitted, some fields like "posting date" or "creation date," we submit, are fairly self-explanatory.

And setting aside the Backpage data altogether to the side, consider the other corroborative evidence about when those CP files were recorded. Consider Kaira's testimony. Consider Dana's testimony telling that you she met Pearlene in February of 2017, when she met the defendant. Consider the

metadata from the five devices. The five devices that Mr. Gutwillig set forth in front of you this morning.

What is not corroborated is the ACS records. That witness took the stand and told you that she actually was concerned about the quality of the date because of the delay in data entry. It was a manual process, and the data was entered weeks after the AWOL actually occurred. And, it could have been no absence was logged if Ms. Brown was gone for 24 hours or 28 hours, potentially 30 hours. She couldn't say.

What she could say is that they could not keep track of students all the time.

The defendant's conspiracy theory also has to expand to the victims, as you heard. Again, it's the only response to their testimony. Testimony that is remarkably consistent, and is devastating to the defendant.

Consider that all of the five victims described recognizable characteristics of the defendant. Again and again you heard the same script. That what the defendant did followed a pattern, an M.O. The girls had to have a personal session with the defendant after they arrived. It was a session of unprotected sex. He suggested taking their photographs soon thereafter. He posted them, sometimes that same day. They met customers at any time of day and night. They had to take the money from the customer first, and give it to the defendant before anything else happened. He decided how

much they got back, and when.

The details line up because the defendant's conduct was consistent, and the victims were credible.

The defendant has no other response to the victims. They have to be lying or wrong or mistaken or have ulterior motives, because if they're telling the truth, it is over for the defendant.

But again, why are all of these victims out to get the defendant? Did any of the victims look like they enjoyed testifying? Consider Kaira having to explain how she recognized the birthmarks on her body around her vagina. She was physically uncomfortable. Think about Arielle testifying about how she went on Bedpage because she was in desperate circumstances. Think about Sabrina describing going back to the defendant's bedroom to have sex with him because the defendant told Sabrina not every girl's vagina is qualified for the job. Think about Dana having to describe the defendant's secret recording of their having sex. She didn't want to tell you about it. These are difficult topics, and their discomfort was visible. They could barely look at the defendant when they were in that witness box. You saw it.

Defense counsel just spent some time talking about how Dana is testifying for immigration benefits. Putting aside whether that is persuasive or even true, and I ask you to recall her testimony and demeanor, but he can't make any

equivalent argument as to Arielle, Aisha, Sabrina or Kaira. It was clear from watching that they endured testifying. They did not enjoy it.

So, ladies and gentlemen, you can and you should scrutinize this claim of a conspiracy. It is a desperate defense when the evidence rules out everything else.

As you can tell, the defendant is calibrating his defense to the options he has left. The defendant sat through each day of this trial. He knows the evidence against him. Most tellingly, perhaps, is his reactions to Aisha and Sabrina's testimony who he claims he never met. Never mind that they both testified that they came with Jessica Bonilla, who he does admit knowing. Never mind that Aisha, Sabrina, and Jessica were all on Target surveillance footage minutes after he was at his house, and on the same day the Backpage ads were created with both Jessica and Aisha's photos.

But for these three girls, who were minors at the time, and their ages not seriously in dispute, the defense has come up with a different calibrated defense.

No ads of Sabrina, no physical evidence to explain away, so he never met her. Ads that Aisha recognized of herself but with an obscured face, so that is someone else. For Jessica, the pictures are clear, it is unmistakable who that is, so he knows her, but he never posted her.

And consider his response to Kaira. Her identity is

undeniable in the photographs from the Backpage ads, from the devices, the ads for Pearlene. So he knows her, but he only met her and prostituted her after he checked her ID and determined she was 18, and specifically no sooner than April 2017. That's ridiculous.

Consider what this tells you. The defendant is working with whatever options he has left. But listen as well to the victims. You heard Sabrina, you heard Aisha, you heard Kaira. Their testimony was credible, it was consistent, it was corroborated. It's the defendant's testimony, his version of events, that simply makes no sense.

THE COURT: Ms. Bracewell, you have two minutes.

MS. BRACEWELL: So rather than focusing on what the defendant did, defense counsel would like to refocus you on what the victims did or didn't do. The insinuation is the victims can't be trusted because they first became involved with the defendant, because they were recruited, because they answered an ad.

They told you how they were recruited. They were the ones who admitted that they responded to the ads. For example, Arielle told you how she went to Bedpage and saw the ad and responded to the ad and went to Brooklyn to meet the defendant. Their testimony has the ring of truth, because they admit to the desperate circumstances that led them to the defendant. And these desperate circumstances made them vulnerable to the

force, to the threats, to the coercion that the defendant inflicted upon them.

The defendant's variant to this is the causal nexus he mentioned. For example, they want to split the defendant's actions from the environment that resulted from those actions. For example, Arielle and this soap incident. It's not about soap. It's about fear, and how that fear affected Arielle. And pause here. Do you think the defendant cared about the soap? No. The defendant understood how to gain control. How a threat of physical force, how a threat against a child's custody, would linger. How it would affect her actions.

Let me move briefly to venue, because the defense has questioned whether that's sufficient here. Let me say first that, as Judge Marrero will instruct you, the government must meet its burden here by a preponderance of the evidence, by showing that it is more likely than not that a relevant act occurred in the Southern District of New York. For each of these counts, that's here.

Arielle was recruited from the Bronx. She received text messages and communicated with the defendant from the Bronx. For Dana, she was kept on a very tight leash. She was allowed to go to Albany, she testified traveling to Albany through Manhattan, but she had to stay in touch with the defendant the whole time, and at his direction he told her to come back and keep working, so she did. For Kaira, recruited

from Good Shepherd in Manhattan. From Jessica Bonilla, who was recruited from Hawthorne Cedar Knolls in Westchester. Jessica visited the defendant with Aisha on the first occasion, as you heard from Aisha, and she came with three other friends, including Aisha and Sabrina, on a second occasion. Aisha told you that he picked the girls up, the defendant picked the girls up in his car from a location in the Southern District, and from this train station to take them to the defendant's apartment.

Sabrina's recollection was different. It was that they left Hawthorne and took themselves to Brooklyn. But Sabrina also observed Jessica already knew the defendant when she arrived. The implication of Sabrina's testimony is clear. Jessica was in touch with the defendant before they ever got to Brooklyn.

THE COURT: Ms. Bracewell, please sum up.

MS. BRACEWELL: Yes.

I'm about to sit down, but I want to leave you with one final thought. Despite what defense counsel says, this case is about the five victims who took the stand. It's about the real women and real children who suffered here. These are women and girls who were preyed on by the defendant. It's about their stories and their courage in coming to tell you what happened to them.

When you consider the evidence and the law, there's

only one conclusion that is consistent with the evidence in the case. That the defendant is guilty.

THE COURT: All right. I thank you. We'll take a 10-minute break.

(Recess)

(In open court; jury not present)

THE COURT: Before we call in the jury, I'm going to be moving to the next phase of the proceeding which is the Court's charge to the jury. These instructions are going to take about one-and-a-half hours. So, if you have other business and need to leave prior to that, then leave now, because we're going to be locking the doors and you will not be able to get in and out once the doors are locked and the Court is giving instructions.

Bring in the jury, please.

(Jury present)

THE COURT: Ladies and gentlemen, before you begin your deliberations, I am going to instruct you on the law. You most pay close attention, and I will be as clear as possible.

I take this opportunity to advise everyone in the courtroom who does not need to be here to leave, because we're going to be closing the courtroom during these court instructions.

Let me note that these instructions will probably take about an hour and a half.

It has been obvious to me and to counsel that until now you have been faithfully discharging your duty to listen carefully and to observe each witness who testified. Your interest never wavered, and you have followed the testimony with close attention. I ask that you now give me that same careful attention as I instruct you on the law.

Listening to these instructions may not be easy. It is important, however, that you listen carefully and concentrate. I ask you to be patient and to pay attention.

I will give you a copy or two of the instructions for you to have in the jury room to consult, so you need not take notes that might possibly distract you from what I am saying. Just listen carefully and concentrate on that.

You have now heard all of the evidence in the case, as well as the final arguments of the lawyers for the parties.

My duty at this point is to instruct you on the law. It is your duty to accept these instructions of law, and apply them to the facts as you determine them, just as it has been my duty to preside over the trial and decide what testimony and evidence is relevant under the law for your consideration.

On these legal matters, you must take the law as I give it to you. If any attorney has stated a legal principle different from any that I state to you in these instructions, it is my instructions that you must follow. You must consider the law only as I instruct you, and you must disregard any

contrary opinion of the relevant law that may be expressed by anyone else, including members of your panel.

You are all instructed that if, by whatever means or authority, you have either heard or formed a view of the law relevant to this case different from what I describe in these instructions, you are not to discuss it with your fellow jurors during any part of the case or during your deliberations. This is very important.

You should not single out any one instruction as definitively stating the law alone, but you must consider my instructions as a whole when you retire to deliberate in the jury room.

You must not -- any of you -- be concerned with the wisdom of any rule of law that I state. Regardless of any opinion that you may have as to what the law may be or ought to be, it would violate your sworn duty to base your verdict upon any view of the law, other than that which I give you.

As members of the jury, you are the sole and exclusive judges of the facts. You pass judgment upon the evidence. You determine the credibility of the witnesses. You resolve such conflicts as there may be in the testimony. You draw whatever reasonable inferences you decide to draw from the facts as you determine them.

I shall later discuss with you how to pass upon the credibility or believability of the witnesses.

In determining the facts, you must rely upon your own recollection of the evidence. What the lawyers have said in their opening statements, or in their closing arguments, in their objections or in their questions is not evidence.

I will remind you that anything I may have said during trial or may say during these instructions with respect to a fact matter should not be taken in substitution for your own independent recollection. What I say regarding any factual matter is not evidence.

The evidence before you consists of the answers given by the witnesses, the testimony they gave, as you recall it, and the exhibits that were received in evidence. The evidence does not include the questions posed by the lawyers. Only the answers are the evidence. But you may not consider any answer that I directed you to disregard or that I directed be struck from the record. Do not consider such answers.

In determining the facts, no one may invade your role as jurors. In order for you to determine the facts, you must rely upon your own recollection of the evidence. Any notes that were taken by jurors during the trial should be used only to refresh the recollection of the juror who took the notes. In addition, notes that you may take may only be used to assist you, and are not to be considered a substitute for your recollection of the evidence in the case. Keep in mind that just because you've written a note does not necessarily mean

that it is accurate. Along the same lines, the fact that a particular juror has taken notes does not entitle that juror's views to any greater weight than the views of any other juror. Again, you were not required to take notes, but if you did so, you may not discuss or share your notes with anyone else before or during your deliberations. Notes are only for you alone.

I have not expressed nor have I intended to suggest any opinion as to whether any witnesses are or are not worthy of belief, what facts have or have not been established, or what inference or inferences should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it. You are, I repeat, the exclusive and sole judges of the questions of fact submitted to you, and of the credibility of the witnesses.

Your authority, however, is not to be exercised arbitrarily; it must be exercised with good judgment, sound discretion, and in accordance with the rules of law which I give you.

You are reminded that you took an oath to render judgment impartially and fairly, and not to be swayed by prejudice, sympathy, or fear, and to be guided solely by the evidence in the case and the applicable law. You must fulfill your oath in order to reach a just and true verdict.

You are to perform the duty of finding the facts

without bias or prejudice as to any party. You are to perform your final duty in an attitude of complete fairness and impartiality.

The fact that the prosecution is brought in the name of the United States of America entitles the government to no greater consideration than that accorded to any other party to a litigation. By the same token, it is entitled to no less consideration. All parties, whether the government or individuals, stand as equals before the bar of justice.

Before I instruct you on the specific issues that you must decide, I want to define for you the standard by which you will decide whether the government has met its burden of proof on a particular issue. This is a criminal case, and as such, the government has the burden of proving all the elements of each of the charges against Mr. Kidd beyond a reasonable doubt.

Although Mr. Kidd has been indicted, you must remember that an indictment is only an accusation. It is not evidence. Mr. Kidd has pleaded not guilty to that indictment.

As a result of Mr. Kidd's plea of not guilty, the burden is on the government to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant for the simple reason that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

It is a cardinal principle of our justice system that

every person accused of a crime is presumed to be innocent, unless and until his guilt is established beyond a reasonable doubt. The presumption is not a mere formality. It is a matter of the most important substance.

I therefore instruct you that Mr. Kidd is presumed by you to be innocent throughout your deliberations until such time, if ever, that you as a jury are satisfied that the government has proven Mr. Kidd guilty beyond a reasonable doubt.

Mr. Kidd began the trial here with a clean slate. This presumption of innocence alone is sufficient to acquit a defendant unless you as jurors are unanimously convinced beyond a reasonable doubt of his guilt, after a careful and impartial consideration of all of the evidence in the case. A defendant has the right to remain silent and never has the burden to present any evidence or to prove that he or she is not guilty. If the government fails to sustain its burden as to Mr. Kidd on any count you are considering, you must find the defendant not guilty on that count.

The presumption of innocence was with Mr. Kidd when the trial began, and remains with him, even now as I speak to you, and will continue with Mr. Kidd into your deliberations, unless and until you are convinced that the government has proven his guilt beyond a reasonable doubt.

I have said that the government must prove Mr. Kidd

guilty beyond a reasonable doubt. The question naturally is, what is a reasonable doubt? The words almost define themselves. It is a doubt based upon reason and common sense. It is a doubt that a reasonable person has, after carefully weighing all of the evidence. It may arise from the evidence, or lack of evidence, or the nature of the evidence. It is a doubt which would cause a reasonable person to hesitate to act in a matter of importance in his or her life. Proof beyond a reasonable doubt must, therefore, be proof of such convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her life affairs. A reasonable doubt is not caprice or whim; it is not a speculation or suspicion. It is not an excuse to avoid the performance of an unpleasant duty. It is not sympathy.

In a criminal case, the burden is at all times upon the government to prove guilt beyond a reasonable doubt. The law does not require that the government prove guilt beyond all possible doubt; proof beyond a reasonable doubt is sufficient to convict. This burden never shifts to a defendant, which means that it is always the government's burden to prove each of the elements of the crime of each crime charged beyond a reasonable doubt.

If, after a fair and impartial consideration of all of the evidence, you are satisfied of the defendant's guilt beyond a reasonable doubt, you must vote to convict the defendant. On

the other hand, if, after fair and impartial consideration of all the evidence you have a reasonable doubt as to the guilt of the defendant, it is your duty -- and you must -- acquit the defendant.

In making your determination of the facts in this case, your judgment must be applied only to that which is properly in evidence.

I will now remind you of the preliminary instructions that I gave you at the start of the trial, as to what you should consider as evidence, from which you are to decide what the facts are. The evidence in this case consists of:

The sworn testimony of witnesses on both direct and cross-examination, regardless of who called the witness; the documents and exhibits which have been admitted into evidence; and any facts to which all the lawyers have agreed or stipulated.

Again, nothing else is evidence. Not what the lawyers said, not what I say, and not anything you heard outside the courtroom.

As I previously instructed you, evidence is the witnesses' answers to the questions put to them, not the questions themselves. Arguments of counsel, no matter how passionate their appeal, are not evidence, although you may give consideration to those arguments in making up your mind as to what inferences to draw from the facts which are in

evidence. What the lawyers have said to you in their opening statements and in their closing arguments, as I said earlier and I stress again, is not evidence. The closing arguments are designed to present to you what the parties believe that the evidence has shown, and what inferences they believe may be drawn from that evidence. If your recollection of the facts differs from the lawyers' statements, it is your recollection which controls. Similarly, the lawyers' characterizations of the witnesses' testimony and assessment of credibility, again, as I stated earlier is not evidence. Only your own evaluation of the testimony and the credibility should influence your deliberations.

You should only consider the exhibits that have been admitted into evidence. Exhibits marked for identification but not admitted are not evidence, nor are materials brought forth only to refresh the recollection of any witnesses. You cannot consider or speculate as to the content of any exhibit not received in evidence.

Similarly, you are to disregard any testimony when I have ordered that it be stricken. As I indicated earlier, only the the witnesses' answers are evidence, and you should not consider a question as evidence.

From time to time, the Court has been called upon to pass upon the admissibility of certain evidence, although I have tried to do so, insofar as practicable, out of your

hearing. You should not be concerned with the reasons for any such rulings, and you are not to draw any inferences from them. Whether offered evidence is admissible is purely a question of law in the province of the Court and outside of the province of the jury.

In admitting evidence to which an objection has been made, the Court does not determine what weight should be given to such evidence, nor does it pass on the credibility of the evidence. Of course, you are required to dismiss from your mind completely any evidence which has been ruled out of the case by the Court, and you must refrain from speculation or conjecture or any guesswork about the nature or effect of any discussions between the Court and counsel held out of your hearing or presence.

It is the duty of the attorneys on each side of the case to object when the other side offers testimony or other evidence which the attorneys believe is not properly admissible. Counsel also has the right and duty to ask the Court to make rulings of law and to request conferences at the sidebar out of the hearing of the jury.

All those questions of law must be decided by the Court. You should not show any prejudice against an attorney or his or her client because the attorney objected to the admissibility of evidence, or asked for a conference out of the hearing of the jury or asked the Court for a ruling of law.

During the course of the trial, there were transcripts shown to you in order to make the other evidence more meaningful and to aid you in considering that evidence. They are not direct, independent evidence; they are transcripts of the evidence, and they are admitted into evidence as aids to you.

Now, some of the exhibits that were admitted into evidence were in the form of charts and summaries. For these charts and summaries that were admitted into evidence, you should consider them as you would any other evidence.

Recall also that in my preliminary instructions I described two kinds of evidence: Direct and circumstantial.

Direct evidence is when a witness testifies about something he or she knows by virtue of his or her own senses -- something he or she has seen, felt, touched or heard.

Circumstantial evidence is evidence which tends to prove a disputed fact by proof of other facts. You infer from the basis of reason and experience and common sense from one established fact, the existence or non-existence of some other fact. If someone walked into the courtroom wearing a raincoat covered with drops of water and carrying a wet umbrella, that could be circumstantial evidence from which you could conclude that it was raining outside.

Circumstantial evidence is of no less value than direct evidence. It is a general rule that the law makes no

distinction between direct and circumstantial evidence, but simply requires that, before convicting a defendant, the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all of the evidence in the case.

During the trial, you have heard me or the attorneys use the term "inference." Inferences are deductions or conclusions from which you, the jury, may reach, using reason, logic and common sense, based on the facts which have been established by the evidence in the case.

You may draw from the facts that you find to have been proved by such reasonable inferences as seem justified in light of your experience. However, you may not treat your power to draw reasonable inferences as permission to indulge in conjecture, speculation, or guesswork. Every inference relied upon by the jury should be based on the evidence or lack of evidence in the case, and drawn on the basis of reason, logic, and common experience.

If you conclude that other persons may have been involved in the criminal acts charged in the indictment, you may not draw any inference, favorable or unfavorable, towards the government or Mr. Kidd, from the fact that such persons were not named as defendants in this case, and you may not speculate as to the reasons why other people are not on trial before you now. Those matters are wholly outside of your concern, and have no bearing on your function as jurors in

deciding the case before you.

In this case, you have heard evidence in the form of a stipulation of fact. A stipulation of fact is an agreement between the parties that a certain fact is true. You must regard such agreed facts as true. However, it is for you to determine what weight to give to those facts.

You also had an opportunity to observe the witnesses. It is your duty to decide how believable each witness was in his or her testimony. You are the sole judges of the credibility of each witness, and of the importance of his or her testimony.

In determining where the truth lies, you should use all of the tests of truthfulness that I mentioned to you earlier -- those that you would use in determining matters of importance to you in your everyday life.

You should consider the opportunity the witness had to see, hear, and know the things about which they testified, the accuracy of their memory, their candor or lack of candor, their intelligence, the reasonableness and probability of its corroboration or lack of corroboration with other believable testimony and evidence. You watched the witnesses. Everything a witness said or did on the witness stand counts in your determination. How did the witness appear? What was the witness's demeanor while testifying? Often it is not what people say, but how they say it, that moves us.

When considering the credibility of each witness, you may consider whether the witness is disposed to favor or disfavor one party or another. Bias, prejudice, or retaliatory motive may affect a witness's perception or recollection of events. It is important to bear the motive of the witness in mind when determining how much weight to give to his or her testimony.

In evaluating the credibility of the witnesses, you should take into account any evidence that any witness who testified may benefit in some way from the outcome of the case. Such an interest in the outcome creates a motive to testify falsely, and may sway a witness's testimony in a way that advances his or her interests. Therefore, if you find that any witness whose testimony you are considering may have an interest in the outcome of the trial, then you should bear that factor in mind when evaluating the credibility of his or her testimony. You should not disregard or disbelieve that testimony simply because the witness has such an interest, but if you accept it, you should do so with great care.

This is not to suggest that every witness who has an interest in the outcome of a case will testify falsely. It is for you to decide to what extent, if at all, a witness's interest has affected or colored his or her testimony.

Inconsistencies or discrepancies in the testimony of a witness, or between the testimony of two different witnesses,

may or may not cause you to discredit such testimony. Two or more persons witnessing an incident or a transaction or participating in the same conversation or meeting may see or hear it differently. Innocent failure of recollection is a common experience. In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail. Ask yourselves whether the discrepancy results from an innocent error, honest confusion, or intentional falsehood, and that may depend on whether it has to do with an important fact or with only a small detail.

After making your own judgment, you will give the testimony of each witness such weight, if any, as you may think it deserves. You may accept or reject the testimony of any witness in whole or in part.

In other words, what you must try to do in deciding credibility is to size up a witness in light of his or her demeanor, the explanations given, and all of the other evidence or lack of evidence in the case. Always remember that you should use your common sense, your good judgment, and your life experience.

The fact that one party called more witnesses and introduced more evidence than the other party does not mean that you should necessarily find the facts in favor of the side offering the most witnesses. By the same token, you do not have to accept the testimony of any witness who has not been

contradicted, if you find the witness not to be credible. You also have to decide which witness to believe and which facts are true. To do this, you must look at all of the evidence, drawing upon your own common sense and personal experience. After considering all of the evidence or lack of evidence, you may decide that the party calling the most witnesses has not persuaded you because you do not believe its witnesses, or because you do not believe the fewer witnesses called by the other side.

Keep in mind that the burden of proof is always on the government, and a defendant is not required to call any witnesses or offer any evidence, since Mr. Kidd is presumed to be innocent.

You have heard the testimony of law enforcement witnesses. The fact that a witness may be employed by the government does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of any ordinary witness.

In this context, defense counsel is allowed to try to attack the credibility of such witnesses on the ground that his or her testimony may be colored by a personal or professional interest in the outcome of the case.

It is your decision, after reviewing all of the evidence, or lack of evidence, whether to accept the testimony of the law enforcement or government employee witness, and to

give that testimony the weight, if any, you find it deserves.

In a criminal case, the defendant cannot be required to testify, but if he chooses to testify, he is, of course, permitted to take the witness stand on his own behalf. Mr. Kidd testified at trial and was subject to cross-examination. You should examine and evaluate this testimony just as you would the testimony of any witness.

You have heard references in this case, in the arguments of counsel, to the fact that certain investigative techniques were used by the government and certain other investigative techniques were not. Specifically, you heard evidence and testimony about evidence seized in connection with certain lawful searches conducted by law enforcement officers. There is no legal requirement that the government prove its case through any particular means. While you are to consider carefully the evidence adduced by the government, you are not to speculate as to why they used the technique it did or why they did not use other techniques. The government is not on trial, and law enforcement techniques are not your concern. Your concern is to determine whether or not, on the evidence or lack of evidence before you, Mr. Kidd's guilt has been proved beyond a reasonable doubt.

(Continued on next page)

THE COURT: As it relates to the testimony of any witness, let me emphasize that any issue of credibility need not be decided in an all-or-nothing fashion. Even if you find that a witness testified falsely in one part, you still may accept his or her testimony in other parts, or you may disregard all of it. This is a determination entirely for you, the jury.

There are people whose names you have heard during the course of the trial who did not appear here to testify. I instruct you that each party had an equal opportunity or lack of opportunity to call any of these witnesses. Therefore, you should not draw any inference or reach any conclusions as to what they may have or would have testified to had they been called. Their absence should not affect your judgment in any way.

You should remember my instruction that the law does not impose on a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

You have heard during the trial that witnesses have discussed the facts of the case and their testimony with lawyers before the witnesses appeared in court.

Although you my consider that fact when you are evaluating a witness's credibility, I instruct you that there is nothing either unusual or improper about a witness meeting with the lawyers before testifying so that the witness may be

aware of the subjects he or she will be questioned about, focus on those subjects, and have the opportunity to review relevant exhibits before being questioned about them. Such consultation helps to conserve your time and the Court's time. In fact, it would be unusual for a lawyer to call a witness without such consultation.

Again, the weight that you give to fact or the nature of the witness's representation for his or her testimony and what inferences you draw from such preparation are matters completely within your discretion.

You have heard testimony from what we call expert witnesses. In this case, Sharon Cooper. An expert witness is one who by education or experience has acquired learning or experience in a science or specialized area of knowledge. Such a witness is permitted to give his or her opinions as to relevant matters in which he or she professes to be an expert and to give his or her reasons for his or her opinions. Expert testimony is presented to you on the theory that someone who is experienced in the field can assist you in understanding the evidence or in reaching an independent decision on the facts.

Now your role in judging credibility applies to the expert witness as well to other witnesses. You should consider the expert opinion which was received in evidence in this case and give the opinion as much or as little weight as you think it deserves. If you should decide that the opinion of the

expert was not based on sufficient education or experience or sufficient data, or if you should conclude that the trustworthiness or credibility of the expert is questionable for any reason, or if the opinion of the expert was outweighed, in your judgment, by other evidence in the case, then you might disregard the opinion of the expert entirely or in part.

On the other hand, if you find the opinion of the expert is based on sufficient data, education and experience, and other evidence does not give you reason to doubt the expert conclusions, you may be justified in placing greater reliance on that expert's testimony.

You should not, however, accept a witness's testimony merely because he or she is an expert. Nor should you substitute it for your own reason, judgment and common sense. The determination of the facts in this case rests solely with you.

Audio recordings, video recordings, text messages and emails have been admitted into evidence. I instruct you that this evidence was obtained in a lawful manner and that no one's rights were violated, and that the government's use of this evidence is entirely lawful.

Therefore, regardless of any personal opinions regarding the obtaining of such evidence, you must give this evidence full consideration along with all the other evidence in this case in determining whether the government has proved

the defendant's guilt beyond a reasonable doubt. What weight you give to these materials, if any, is completely within your discretion.

Your verdict must be based solely on the evidence developed at trial or the lack of evidence. It would be improper for you to consider, in reaching your decision as to whether the government as sustained its burden of proof, any personal feelings that you may have about Mr. Kidd's race, religion, national origin, sex, or age. Similarly, it would be improper for you to consider any personal feelings that you have about the race, religion, national origin, sex, or age of any other witness or anyone else involved in the case. Mr. Kidd is entitled to a trial free from prejudice, and our judicial system cannot work unless you reach your verdict through a fair and impartial consideration of the evidence.

It would be equally improper for you to allow any feelings you may have about the nature of the crimes charged to interfere with your decision-making process.

To repeat, your verdict must be based exclusively on the evidence or the lack of evidence in this case.

Under your oath as jurors, you are not to be swayed by sympathy. You are to be guided solely by the evidence in the case. And the crucial question that you must ask yourselves as you sift through the evidence is: Has the government proven the guilt of Mr. Kidd beyond a reasonable doubt?

It is for you alone to decide whether the government has proved beyond a reasonable doubt that Mr. Kidd is guilty of the crimes charged solely on the basis of the evidence and subject to the law as I charge you. It must be clear to you now that once you let fear or prejudice or bias or sympathy interfere with your thinking, there is a risk that you will not arrive at a true and just verdict.

Therefore, if you should find that the government has met its burden of proving Mr. Kidd's guilt beyond a reasonable doubt, you should not hesitate because of any other reason to render a verdict of guilty as to Mr. Kidd. But on the other hand, if you have a reasonable doubt as to Mr. Kidd's guilt, you should not hesitate for any reason to find a verdict of not guilty as to Mr. Kidd.

Under your oath as jurors, you cannot allow a consideration of possible punishment that may be imposed upon Mr. Kidd, if convicted, to influence you in any way or in any sense to enter into your deliberations. The duty of imposing sentence is the Court's and the Court's alone. Your function is to weigh the evidence and to determine whether the government has proved beyond a reasonable doubt that Mr. Kidd is or is not guilty upon the basis of the evidence and the law.

Therefore, I instruct you not to consider punishment or possible punishment in any way in your deliberations in this case.

You are obliged under your oath as jurors to follow the laws I instruct you, whether you agree or disagree with the particular law in question.

With these instructions in mind, let us turn to the charges against Mr. Kidd as contained in the indictment. As I instructed you at the outset of the case, the indictment is a charge or accusation. It is not evidence. The indictment in this case contains five counts. In reaching a verdict, however, you must bear in mind that you must consider each count individually with respect to whether the government has proven its case beyond a reasonable doubt. Your verdict as to Mr. Kidd on each count must be determined separately, solely on the evidence, or lack of evidence presented against him without regard to whether anyone else is guilty or not guilty.

Before you begin your deliberations, you will be provided with a copy of the indictment to reference as necessary. You will also have a copy of these instructions. I will not read the entire indictment to you, as you will have it during your deliberations here. I will summarize each offense charged in the indictment at the time that I explain in detail the elements of the offense for you.

As I have indicated, the indictment contains five counts. Each count constitutes a separate offense or crime. You must consider each count separately and determine whether the government has carried its burden of proof with respect to

that count and Mr. Kidd. I will provide you with a verdict form, and you will need to report the results of your deliberations on each count on the verdict form. To do so, you will need to keep track during your deliberations of which charge you are considering and the legal elements applicable to that charge. The case against Mr. Kidd on each count stands or falls upon the proof or lack of proof against Mr. Kidd, and your verdict as to Mr. Kidd on any count should not control your decision as to any other count. No other considerations are proper.

The government has brought five charges against Mr. Kidd stated in Counts One through Five of the indictment.

For each count, the government has the burden of proving identity beyond a reasonable doubt. It is not essential that the particular witness be free from doubt as to the correctness of his or her identification of Mr. Kidd. However, you, the jury, must be satisfied beyond a reasonable doubt of the accuracy of the identification of that defendant before you render a verdict of guilty. If you are not convinced beyond a reasonable doubt that Mr. Kidd was the person who committed the crime, you must find Mr. Kidd not guilty of the particular charge.

Count One of the indictment charges that in or about the spring of 2015, up to and including in or about February 2017, Lloyd Kidd, also known as "Chris Kidd," "Gerard

Agard," and "Red," the defendant, engaged in sex trafficking of a minor victim identified as Victim-1 (Kaira Brown), by force, threats of force, fraud, coercion, or a combination of such means, in violation of Title 18, United States Code, Sections 1591(a), (b)(1), (b)(2), and 2.

Count Two of the indictment charges that, in or about the summer of 2017, Lloyd Kidd, the defendant, engaged in sex trafficking of another minor victim, identified as Victim-2 (Jessica Bonilla), in violation of Title 18, United States Code, Sections 1591(a), (b)(2), and 2.

Count Three of the indictment charges that from in or about February 2017, up to and including at least in or about December 2018, Lloyd Kidd, the defendant, engaged in sex trafficking of an adult victim, identified as Victim-3 (Dana McLeod), by force, threats of force, fraud, coercion or a combination of such means, in violation of Title 18, United States Code, Sections 1591(a), (b)(1) and 2.

Count Four of the indictment charges that from in or about August 2018, up to and including at least in or about December 2018, Lloyd Kidd, the defendant, engaged in sex trafficking of another adult victim, identified as Victim-4 (Ariele Palopolo), by force, threats of force, fraud, coercion or a combination of such means in violation of Title 18, United States Code, Sections 1591(a), (b)(1), and 2.

Count Five of the indictment charges that, in or about

February 2017, Lloyd Kidd, the defendant, employed, used, persuaded, induced, and enticed Victim-1 (Kaira Brown), who was then a minor, to engage in sexually explicit conduct which Mr. Kidd recorded in images and videos.

Now I'll go over each of the counts starting with Count One.

Counts One through Four of the indictment charge the defendant with sex trafficking in violation of Title 18, United States Code, Section 1591, which provides, in pertinent part, that:

"Whoever knowingly, in or affecting interstate commerce, recruits, entices, harbors, transports, provides, obtains, advertises, maintains, patronizes, or solicits by any means a person; or benefits, financially or by receiving anything of value, from participating in a venture which has engaged in such an act, knowing or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion, or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in commercial sex act, is guilty of a federal crime."

To sustain its burden of proof with respect to the charge of sex trafficking, as contained in Count One of the indictment, the government must prove beyond a reasonable doubt each of the following elements:

First, that Mr. Kidd knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-1 (Kaira Brown);

Or that Mr. Kidd knowingly benefited, financially or be receiving anything of value, from participating in a venture that recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-1 (Kaira Brown);

Second, that Mr. Kidd knew or recklessly disregarded the fact that Victim-1 (Kaira Brown) was under the age of 18 and would be caused to engage in a commercial sex act;

And/or that Mr. Kidd knew or recklessly disregarded the fact that force, fraud or coercion or any combination of such means would cause Victim-1 (Kaira Brown) to engage in a commercial sex act;

Third, Mr. Kidd's acts were in or affecting interstate or foreign commerce.

Now let us go separately and consider the three elements.

We will turn to first element that the government must establish beyond a reasonable doubt, that Mr. Kidd, (1) knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-1 (Kaira Brown) or, (2) knowingly benefited, financially or by receiving anything of value, from participating in a

venture that recruited, enticed, harbored, transported, provided, obtained, maintained, advertised, patronized, or solicited a person.

Therefore, there are two different ways for the government to satisfy the first element. The first is by proving that Mr. Kidd himself knowingly engaged in one of the prohibited trafficking acts, that is, recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing or soliciting a person. The second way is by proving that Mr. Kidd knowingly took part in a venture that engaged in one of those trafficking activities and benefited financially or by receiving a thing of value from the venture. The government does not have to prove that Mr. Kidd violated the statute both ways.

With respect to your consideration of whether the defendant himself knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited a person, I instruct you to use the ordinary everyday definitions of these terms. "Recruit" means to seek to enroll. "Entice" means to attract, induce, or lure using hope or desire. "Harbor" means to give or afford shelter to, such as in a house or other place. "Transport" means to take or convey from one place to another. "Provide" means to furnish, supply or make available. "Obtain" means to gain possession of or acquire. "Advertise" means to publicize.

"Patronize" means to visit or obtain services in exchange for money. "Solicit" means to seek out. "Maintain" means to keep in an existing state or support. I instruct you, however, that you may not consider conduct that occurred before May 29, 2015, when determining whether the defendant advertised, solicited or patronized another person.

The second or alternative way to prove the first element of sex trafficking is for the government to show that there was a venture that engaged in recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing or soliciting a person, that Mr. Kidd knowingly participated in some way in that venture and that Mr. Kidd knowingly benefited financially or by receiving anything of value from that venture. Again, you may not consider conduct that occurred before May 29, 2015, when determining whether Mr. Kidd benefited from the venture that engaged in advertising, soliciting or patronizing another person.

In considering whether Mr. Kidd participated in such a venture, I instruct you that a venture is defined as "any group of two or more individuals associated in fact, whether or not as a legal entity." You may find that the defendant participated in a venture prohibited by the sex trafficking law if the defendant took part in that venture in any way. Mr. Kidd may be, but need not be, one of the people who formed

that venture. Likewise, Mr. Kidd need not be an organizer or main participant in the venture and need not have participated in the length of the venture. It is enough if Mr. Kidd took some part in the venture for a period of time while the venture was still ongoing, even if the part he played was minor, and even if it was not related to the actual recruiting, enticing, harboring, transporting, providing, obtaining, advertising, maintaining, patronizing or soliciting of a person for commercial sex.

To benefit, financially or by receiving anything of value, from the venture, Mr. Kidd must receive some form of profit or benefit, value or advantage, no matter how minor or intangible from the venture.

Of course, if you find the defendant himself recruited, enticed, harbored, transported, provided, obtained, maintained, advertised, patronized or solicited a person, you need not consider whether or not that defendant benefited from doing so.

The question of whether a person acted with knowledge is a question of fact for you to determine, like any other fact question. Direct proof of knowledge is not always available, and such specific proof is not required. In everyday affairs, we commonly draw inferences and make judgments about the state of mind of other people from their actions, and you can rely on circumstantial evidence to determine that person's state of

mind. The ultimate fact of whether a person knew something at a particular time, although subjective, may be established by circumstantial evidence based on that person's outward manifestations, words, conduct, acts, and all the surrounding circumstances disclosed by the evidence and the rational or logical inferences that may be drawn from them.

An act is done knowingly if it is done deliberately and purposefully; that is, the actions of Mr. Kidd must have been his conscious objective rather than the product of a mistake or accident or mere negligence or some other innocent reason. Knowledge is a matter of inference from proven facts. Science has not yet devised a manner of looking into a person's mind and knowing what that person is thinking. It is for you to determine whether the government has established beyond a reasonable doubt that the government has established beyond a reasonable doubt that the requisite knowledge and intent on the part of Mr. Kidd existed.

The process of drawing inferences from circumstantial evidence is no different from what people normally mean when they say, "use your common sense." Using your common sense means that when you come to decide whether the defendant possessed or lacked a particular intent, you do not have to limit yourself to just what he said, but you also look at what he did and what others did in relation to him, and, in general, everything that occurred.

In deciding whether or not the first element of the sex trafficking statute has been satisfied, you need not all agree that the government has proven the element the first way or the second way. Stated differently, you need not all agree that the defendant actually recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited a person, or also all agree that the defendant participated in a venture that did one of those things and benefited thereby. You need only agree that the government has proven beyond a reasonable doubt that the defendant did one or the other of those alternatives that I have described to you.

We will now turn to the second element.

The second element of sex trafficking requires the government to prove beyond a reasonable doubt that, (1) Mr. Kidd knew, or recklessly disregarded that Victim-1 (Kaira Brown) was under the age of 18 and would be caused to engage in a commercial sex act or, (2) Mr. Kidd knew, or recklessly disregarded, that force, fraud or coercion, or any combination of such means, would be used to cause Victim-1 (Kaira Brown) to engage in a commercial sex act.

With respect to Count One, the indictment alleges that Mr. Kidd knew or recklessly disregarded one or both of these facts, and you should consider and determine whether Mr. Kidd knew or recklessly disregarded both of these facts. Keep in

mind, however, that you need not find that Mr. Kidd knew or recklessly disregarded both of these facts, it is sufficient to find that Mr. Kidd knew or recklessly disregarded either one of these facts.

Although the finding that Mr. Kidd knew or recklessly disregarded one of these facts is sufficient to satisfy this element, I instruct you, the jury, that you must unanimously agree on whether Mr. Kidd knew or recklessly disregarded one or both of these facts. If the government fails to prove beyond a reasonable doubt that Mr. Kidd knew or recklessly disregarded one of these facts, or if you cannot unanimously agree as to which of the facts the indictment alleges the defendant knew or recklessly disregarded, then you must find Mr. Kidd not guilty as to Count One.

In determining whether Mr. Kidd knew or recklessly disregarded that the victim was under the age of 18, please apply the definition of "knowingly" previously provided to you.

The phrase "recklessly disregarded" means deliberate indifference to facts that, if considered and weighed in a of reasonable manner, indicate the highest probability that the victim was under the age of 18. In order to prove beyond a reasonable doubt that Mr. Kidd recklessly disregarded the fact that Victim-1 (Kaira Brown) was under 18 years of age, the government must prove that Mr. Kidd deliberately closed his eyes to what would otherwise are been obvious to him. A

person's reckless disregard of a particular fact may be shown from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of a fact.

I instruct you, however, that if you determine Mr. Kidd "advertised" Victim-1 (Kaira Brown), you must find that Mr. Kidd acted knowingly, or, in other words, that he knew that Victim-1, Kaira Brown, advertised was under the age of 18. For this means of violating the sex trafficking statute, and for this means alone, reckless disregard is insufficient.

The government need not prove that Mr. Kidd knew or recklessly disregarded that Victim-1 (Kaira Brown) was under the age of 18 if the government proves beyond a reasonable doubt that Mr. Kidd had a reasonable opportunity to observe Victim-1 (Kaira Brown).

So the government must prove this element by proof regarding age beyond a reasonable doubt of one of the following: First, that Mr. Kidd actually knew that Victim-1 (Kaira Brown) was under the age of 18; second, that Mr. Kidd was in reckless disregard of the fact that Victim-1 (Kaira Brown) was under the age of 18; or third, that Victim-1 (Kaira Brown) was under 18 at the time of the alleged conduct, and Mr. Kidd had a reasonable opportunity to observe Victim-1 (Kaira Brown).

In determining whether Mr. Kidd knew or recklessly disregarded that force, fraud, or coercion or any combination

of such means, were used with respect to Victim-1 (Kaira Brown) I instruct you to apply the following definitions:

I instruct to you apply the definitions of "knowingly" and "recklessly disregarded" that I have previously provided to you.

The term "force" means any form of power, violence, or physical pressure directed against another person.

The term "fraud" means that the defendant knowingly made a misstatement or omission of a material fact to entice the victim. A material fact is one that would reasonably be expected to be of concern to a reasonable person in relying upon the representation or statement in making a decision.

The term "coercion" has three meanings. It means that any threat of serious harm to or physical restraint against any person; or any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm or to physical restraint against any person; or any abuse or threatened abuse of law or the legal process.

The term "serious harm" includes threats of any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious in kind or degree under all of the surrounding circumstances to compel a reasonable person of the same background and in the same situation as the trafficked person to perform or continue to perform commercial sexual activity in order to avoid

incurring that harm.

"Abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil or criminal, in a manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action. "Abuse or threatened abuse of law or legal process" includes threats that are sufficient, under all the surrounding circumstances, to compel or coerce a person to perform a commercial sex act that she would not have otherwise been willing to perform.

If you find that any of these prohibited means was used, or any combination of these means, you must then determine whether such use was sufficient to cause Victim-1 (Kaira Brown) to engage in commercial sex against her will. In making that determination, you may consider the cumulative effect of the conduct of the defendant on Victim-1 (Kaira Brown) as well as Victim-1's (Kaira Brown's) particular station in life, physical and mental condition, age, education, training, experience, and intelligence.

To prove sex trafficking, the government does not need to link any specific commercial sex act to any particular threat made, or any particular action taken, or any particular act of fraud or deception on the part of the defendant. If the defendant's use of threats, force, fraud or coercion or any

combination thereof was sufficient to give rise to reasonable feelings of fear that would compel a reasonable person in Victim-1's (Kaira Brown's) situation to comply with the defendant's demands in light of the totality of the defendant's conduct, the surrounding circumstances, and any vulnerabilities of Victim-1 (Kaira Brown), then you likewise may find that the second element has been met.

You may also consider whether Mr. Kidd's conduct gave rise to reasonable feelings of fear that overcame the will of Victim-1 (Kaira Brown). Such reasonable feelings of fear may arise not only from the defendant's threats and other acts directed at Victim-1 (Kaira Brown) herself, but also from conduct directed at others that Victim-1 (Kaira Brown) is aware of.

The government also need not prove physical restraint, such as the use of chains, barbed wire, locked doors, in order to establish the offense of sex trafficking. The fact that Victim-1 (Kaira Brown) may have had an opportunity to escape is irrelevant if the defendant placed her in fear of leaving or created circumstance such that she did not reasonably believe she could leave. A victim is under no affirmative duty to try to escape.

Also, the fact that a person may have initially acquiesced or agreed to perform a commercial sex act does not preclude a finding that the person was later compelled to

engage in prostitution through the use of force, fraud or coercion, or a combination of such means. For example, if a victim willingly engaged in an act of prostitution then later wanted to withdraw but was compelled to continue to perform acts of prostitution through force, fraud or coercion, then you may find that her later of acts of prostitution were compelled by force, fraud or coercion.

Finally, whether a person is paid or able to keep some of her earnings is not determinative of the question of whether that person has been compelled to engage in sex trafficking. In other words, if a person is compelled to engage in a commercial sex act through force, fraud or coercion, such service is involuntary even if she is paid or compensated for the work.

A "commercial sex act" is any sex act on account of which anything of value is given to or received by any person.

It is not required that Victim-1 (Kaira Brown) actually performed a commercial sex act as long as the government has proved that the defendant recruited, enticed, harbored, transported, provided, obtained, maintained, advertised, patronized or solicited the victim for the purpose of engaging in commercial sex acts.

It is also not relevant whether or not a minor victim was a willing participant in performing commercial sex acts. Consent by a minor is not a defense to the charge in Count One

of the indictment.

To satisfy the third and final element of the crime of sex trafficking, the government must prove beyond a reasonable doubt that Mr. Kidd's sex trafficking activities were in interstate commerce or affected interstate commerce. The government need not prove both that the activities were in interstate commerce and affected interstate commerce.

The term "interstate commerce" means the movement of property from one state to another state. The term "state" includes a state of the United States and the District of Columbia. Interstate commerce simply means the movement of goods, services, money, and individuals between any two or more states or between one state and the District of Columbia.

To satisfy this element, the government must prove that Mr. Kidd's conduct affected interstate commerce in any way, no matter how minimal. In determining whether Mr. Kidd's conduct affected interstate commerce, you may consider whether Mr. Kidd used means, instrumentalities or facilities of interstate commerce. A facility of interstate commerce is some thing, tool or device that is involved in interstate commerce. Cell phones and the internet are both means, facilities, or instrumentalities of interstate commerce.

Interstate commerce includes the transportation of an individual across state lines by car and such transportation is in interstate commerce.

It is not necessary for the government to prove that Mr. Kidd knew his conduct was in or affecting interstate commerce.

If you find beyond a reasonable doubt that Mr. Kidd's recruitment, enticement, harboring, transportation, providing, obtaining, advertising, maintaining, patronizing, soliciting of a person for the purpose of engaging in commercial sex acts was economic in nature and involved the crossing of state lines, or was economic in nature and otherwise affected the flow of money to any degree, however minimal, you may find that the interstate commerce requirement of the offense of sex trafficking of a minor has been satisfied.

I further instruct you that to find this element has been proved beyond a reasonable doubt, it is not necessary for you to find that any interstate travel occurred. Proof of actual travel is not required.

To find Mr. Kidd guilty of Count Two, you must find that the government has proven each of the following elements beyond a reasonable doubt:

First, that Mr. Kidd knowingly recruited, enticed harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-2 (Jessica Bonilla);

Or that Mr. Kidd knowingly benefited, financially or by receiving anything of value, from participating in a venture that recruited, enticed, harbored, transported, provided,

obtained, advertised, maintained, patronized or solicited Victim-2 (Jessica Bonilla);

Second, that Mr. Kidd knew or recklessly disregarded the fact that Victim-2 (Jessica Bonilla) was under the age of 18 and would be caused to engage in a commercial sex act;

Third, Mr. Kidd's acts were in or affecting interstate or foreign commerce.

The instructions that I previously gave to you for each of those elements for Count One also apply to Count Two.

To find Mr. Kidd guilty of Count Three, you must find that the government has proved each of the following elements beyond a reasonable doubt:

First, that Mr. Kidd knowingly recruited, endorsed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-3 (Dana McLeod);

Or that Mr. Kidd knowingly benefited, financially or by receiving anything of value, from participating in a venture that recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-3 (Dana McLeod);

Second, that Mr. Kidd knew or recklessly disregarded the fact that force, fraud, or coercion, or any combination of such means, and Victim-3 (Dana McLeod) would be caused to engage in a commercial sex act;

And third, Mr. Kidd's acts were in or affecting

interstate or foreign commerce.

The instructions that I previously gave to you for each of these elements for Count One and Two also apply to Count Three.

To find Mr. Kidd guilty of Count Four, you must find that the government has proven each of the following elements beyond a reasonable doubt:

First, that Mr. Kidd knowingly recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-4 (Ariele Palopolo);

Or Mr. Kidd knowingly benefited, financially or by receiving anything of value, from participating in a venture that recruited, enticed, harbored, transported, provided, obtained, advertised, maintained, patronized or solicited Victim-4 (Ariele Palopolo);

Second, that Mr. Kidd knew or recklessly disregarded the fact that force, fraud, or coercion, or any combination of such means, and Victim-4 (Ariele Palopolo) would be caused to engage in a commercial sex act;

Third, Mr. Kidd's acts were in or affecting interstate or foreign commerce.

The instructions I gave you with regards to each of these elements for Count One and Count Two and Three also apply to Count Four.

Turning lastly to Count Five of the indictment, it

charges Mr. Kidd with the crime of employing, using, persuading inducing, enticing, or coercing a minor, Victim-1 (Kaira Brown), to engage in sexually explicit conduct for the purpose of producing child pornography.

The indictment charges Mr. Kidd with violating Section 2251(a) of Title 18, United States Code. That section provides in relevant part, that:

"Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be guilty of a crime if such person knows or has reason to know that such visual depiction will be transported or transmitted in or affecting interstate or foreign commerce or mailed, if that that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted in or affecting interstate or foreign commerce or mailed."

In order to prove Mr. Kidd guilty of using a minor to produce child pornography, the government must prove each of the following elements beyond a reasonable doubt:

First, that Victim-1 (Kaira Brown) was under the age

of 18;

Second, that Mr. Kidd used, employed, persuaded, induced, enticed or coerced Victim-1 (Kaira Brown) to take part in sexually explicit conduct for the purpose of producing or transmitting a visual depiction of that conduct; and

Third, that the visual depiction was produced or transmitted using materials that had been mailed or transported in or affecting interstate or foreign commerce.

The Court will now address each element separately.

The first element that the government must prove beyond a reasonable doubt is that Victim-1 (Kaira Brown) was less than 18 years old at the time of the acts alleged in the indictment.

The government does not have to prove that Mr. Kidd knew that Victim-1 (Kaira Brown) was less than 18 years old.

The second element that the government must prove beyond a reasonable doubt is that the defendant used, employed, persuaded, induced, enticed, coerced Victim-1 (Kaira Brown) to take part in sexually explicit conduct for the purpose of producing or transmitting a visual depiction of that conduct.

A "visual depiction" includes any photograph, film, video, or picture, including undeveloped film and videotape, and data stored on computer disk or by electronic means that is capable of conversion into a visual image.

"Sexually explicit conduct" means actual or simulated

sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; bestiality; masturbation; sadistic or masochistic abuse; or lascivious exhibition of the genitals or pubic area of any person.

The term "lascivious exhibition" means a depiction that displays or brings to view to attract notice to the genitals or pubic area of children in order to excite lustfulness or sexual stimulation in the viewer. Not every exposure of the genitals or pubic area constitutes a lascivious exhibition. In deciding whether the government has proved that a particular visual depiction constitutes a lascivious exhibition, you should consider the following questions:

Whether the focal point of visual depiction is on the child's genitals or pubic area or whether there is some other focal area.

Whether the setting of the visual depiction makes it appear to be sexually suggestive, for example, in a place or pose generally associated with sexual activity.

Whether the child is displayed in an unnatural pose or in inappropriate attire, considering the age of the child.

Whether the child is fully or partially clothed or nude, although nudity is not in and of itself lascivious.

Whether the visual depiction suggests sexual coyness or a willingness to engage in sexual activity.

And whether the visual depiction is intended or designed to elicit a sexual response in the viewer.

It is not required that a particular visual depiction involve all of these factors to be a lascivious exhibition. The importance that you give to any one factor is up to you to decide.

The third element that the government must prove beyond a reasonable doubt is that the visual depiction was produced using materials that had been mailed or transported or transmitted in or affecting interstate commerce.

Simply stated, the phrase "transported in interstate or foreign commerce" means that the materials used to produce the visual depiction had previously moved from one state to another or between the United States and another country. Here, the government alleges that a device used to produce or transmit the photographs and video in question were manufactured in another country. I instruct you that if you find that the device on which the visual depiction was produced or transmitted was manufactured outside of New York State, that is sufficient to satisfy this element. The government does not have to prove that the defendant personally transported the phone across a state line, or that the defendant knew that the phone had previously crossed a state line.

As we have proceeded through the indictment, you have noticed that it refers to various dates. I instruct you that

it does not matter if a specific event is alleged to have occurred on or about a certain date or month but the testimony indicates what in fact it was on a different date or month. The law requires only a substantial similarity between the dates and months alleged in the indictment and the dates and months established by the evidence.

Now in addition to dealing with the elements of Counts One through Five, you must also consider the issue of venue as to Counts One through Five, namely, whether any act in furtherance of the unlawful activity occurred within the Southern District of New York. The Southern District of New York encompasses the following counties: New York county, that is Manhattan, the Bronx, Westchester, Rockland, Putnam, Dutchess, Orange and Sullivan Counties. Anything that occurs in any of those places occurs in the Southern District of New York.

I should note that on this issue and this issue alone, the government need not prove venue beyond a reasonable doubt, but only by a mere preponderance of the evidence. A "preponderance of the evidence" means that the government must prove that it is more likely than not that any fact in furtherance of the offenses occurred in the Southern District of New York. Thus, the government has satisfied its venue obligations if you conclude that it is more likely than not that any act in furtherance of a crimes with which Mr. Kidd is

charged occurred within this district.

If you find that the government has failed to prove this venue requirement, then you must acquit Mr. Kidd.

I have now outlined for you the rules of law applicable to the case and the processes by which you weigh the evidence and determine the facts. The most important part of the case, members of the jury, is the part that you are now as jurors about to play as you deliberate on the issues of fact. I know that you will try the issues that have been presented to you according to the oath that you have taken as jurors. In that oath you promised that you would well and truly try the issues in this case and render a true and just verdict.

In a few minutes you will retire to the jury room for your deliberations. In this courtroom it is customary for Juror Number 1, the juror seated in the chair closest to the judge's bench, to be the foreperson. In this case, that is Ms. Susan Herzog. So that your deliberations may proceed in an orderly fashion, you must have a foreperson, but, of course, her voice is entitled to no greater weight than any other juror. The foreperson has no greater voice or authority than any other juror. The foreperson will send out notes when the jury has reached a verdict, and she will notify the court security officer that the jury has reached a verdict.

The government, to prevail, must prove all of the essential elements by proof beyond a reasonable doubt, as

already explained in these instructions. If it succeeds, your verdict should be guilty; if it fails, it should be not guilty in. To report a verdict, you must be unanimous.

Your function is to weigh the evidence in the case and determine whether or not Mr. Kidd is guilty solely on the basis of such evidence.

Each juror is entitled to his or her opinion; each should, however, exchange views with his or her follow jurors. That is the very purpose of jury deliberations: To discuss and consider the evidence, to listen to arguments of fellow jurors, to present your individual views, to consult with one another, and to reach an agreement based solely and wholly on the evidence, if you can do so without violence to your individual judgment.

Each of you must decide the case for yourself, after consideration with your fellow jurors, of the evidence in the case. But, in the course of your deliberations, you should not hesitate to reexamine your views and change an opinion if you are convinced that it is erroneous.

If, after careful consideration of all of the evidence and the arguments of your fellow jurors you entertain a conscientious view that differs from that of others, you are not to yield your conviction simply because you are outnumbered.

Your final vote must reflect your conscientious

conviction as to how the issues should be decided. Your verdict, whether guilty or not guilty, must be unanimous.

When you are in the jury room, listen to each other and discuss the evidence and issues in the case among yourselves. It is the duty of each of you as jurors to consult with one another and to deliberate with a view to reaching an agreement on a verdict if you could do so without violating your individual judgment and your conscience. Every juror should be heard. No one juror should hold center stage in the jury room, and no one juror should control or monopolize the deliberations. To reach a verdict, all of you must agree, but you must not surrender your honest convictions for the mere purpose of returning a verdict or solely because of the opinion of other jurors.

I will give you a verdict form to be filled out by the jury. No inference is to be drawn from the way the verdict form is worded as to what the answer should be. The questions are not to be taken as any indication that I have an opinion as to how they should be answered.

(Continued on next page)

THE COURT: (Continuing) Before the jury attempts to answer any question, you are to read the entire verdict form and make sure that every person understands each question. Before you answer the questions, you should deliberate in the jury room and discuss the evidence that relates to the questions you must answer. When you have considered the questions thoroughly, and the evidence that relates to those questions, then record your answers on the verdict form I will give you. Remember, all answers must be agreed upon by all of you.

Now, ladies and gentlemen, you are about to go into the jury room and begin your deliberations. All of the exhibits will be given to you at the start of the deliberations. If you want any testimony read back to you, you may also request that. Please remember that while we do have a daily written transcript available, if you do for testimony to be read back to you, the reporter must search through his or her notes, and the lawyers must agree on that portion or those portions of the testimony that may be called for, and if they disagree, I must then resolve those disagreements. That can be time consuming, so please try to be as specific as you possibly can be in requesting portions of the testimony, if you do so.

Your requests for testimony -- in fact, any communication with the Court -- should be made in to me in writing, signed by the foreperson, and given to one of the

court security officers. In any event, do not tell me or anyone else how the jury stands on any issue until after a verdict is reached.

When you make a request and the foreperson signs it, please indicate the date and time on the note. I will provide you with form communication sheets on which the foreperson should make all communications with the Court.

I will be sending a copy of the indictment into the jury room for you to have during your deliberations. You may use it to read the crimes with which Mr. Kidd is charged with committing. Again, I remind you that the indictment is merely an accusation, and is not to be used by you as proof of any of the conduct charged.

Finally, and I say this not because I think it is necessary, but because it is the custom in this courtroom. You should treat each other with courtesy and respect during your deliberations.

After you have reached a verdict, your foreperson will fill in the verdict form that will be given to you, sign and date it, and advise the court security officer at the door that you are ready to return to the courtroom.

If you are divided, do not report how the vote stands, and if you have reached a verdict, do not report what it is until you are asked in open court.

I will stress that you should be in agreement with the

verdict that is announced in court. Once your verdict is announced by your foreperson in open court and officially recorded, it cannot ordinarily be revoked.

Remember that your verdict must be rendered without favor, fear, and without sympathy or prejudice.

I thank you for your attention and attentiveness. Counsel, please approach.

(At the sidebar)

THE COURT: Are there any additional objections to the instructions as read or any corrections that you may wish to call to the Court's attention?

MS. TARLOW: The only comment that the government had, your Honor, is that your Honor read exactly what was written in the jury instruction, but we would request one substitution of a word, which is on page 47, "transported the device across state lines," as opposed to "the phone" or that "the defendant knew that the device had previously crossed state lines."

THE COURT: All right.

MR. MARGULIS-OHNUMA: I have no particular view on that.

THE COURT: All right. Do you have any additional objections?

MR. MARGULIS-OHNUMA: No.

THE COURT: To the instruction as read?

MR. MARGULIS-OHNUMA: I do not.

THE COURT: The Court notes that Mr. Margulis had previously made other objections, they're on the record, and that he has preserved them.

MR. MARGULIS-OHNUMA: Thank you, your Honor.

THE COURT: All right.

(In open court)

THE COURT: I'm going to make one word correction in one of the instructions I gave, relating to the phrase "transported in interstate or foreign commerce," which I gave in connection with Count Five.

I instructed that if you find that a device that is in question on which the visual depiction was produced or transported was manufactured outside of New York State, that is sufficient to satisfy this element. I indicated that the government does not have to prove that the defendant personally transported.

When I gave you the instructions, I used the word "phone." The proper word is "device" across the state line or that the defendant knew that the device had been previously crossed, had previously crossed a state line.

The clerk will swear in the court security officer.

(Court security officer sworn)

THE COURT: All right. Before I ask the court security officer to escort the jury into the jury room, let me suggest one thing. You may wish, after you had sufficient

opportunity to have your lunch and get organized, consider what your schedule of deliberations would be, at least initially today, so that we make sure that all of the parties and counsel are present when you're ready to adjourn, if you are able to determine what time you may be adjourning. I recognize that depends on a whole lot of factors, but at some point during your deliberations, if you conclude that you are going to be adjourning for the day, say at 5 p.m., it would be useful for you to send a note to that effect so we can then know when to call you back into the courtroom.

Another item of business, you may recall that I told you at the time that you were impaneled that two of the jurors were designated as alternates. In this case, they were Mr. Santos and Mr. Hoberman. You are excused at this time. You may pick up your belongings and take them with you. Let me thank you for your participation in the process. I recognize that it might be somewhat disappointing. But, nonetheless, your having been part of this process is of great value to the process and the system of justice, and the Court appreciates it.

(Alternate jurors excused)

THE COURT: You may escort the jury into the jury room.

(Jury begins deliberations. Time noted 1:10 p.m.)

THE COURT: Thank you. Would counsel please approach

into the robing room. Counsel only.

(Discussion off the record in the robing room)

(Recess pending verdict)

(Continued on next page)

THE COURT: The Court received a note from the jury posing a question. The Court will mark this note as Court Exhibit Number 1 dated July 12 at 1:50 p.m.

The note reads: Venue question, "What is the definition of any 'act in furtherance,' and by whom? Is it sufficient if the 'victim' communicated from the Southern District?"

Have the parties had an opportunity to review the note and have any comments on an appropriate response?

MS. BRACEWELL: Yes, your Honor, we had an opportunity to review the note and found a couple of cases, Second Circuit cases on point. We conferred very briefly with defense counsel about what an appropriate instruction would look like, drawing from this language in *U.S. v. Svoboda*. We're happy to confer a few more minutes and see if we can arrive at a mutually agreeable response, or I could hand up the case.

THE COURT: Why don't you do both, hand up a version.

(Pause)

MR. MARGULIS-OHNUMA: I think we have something.

MS. BRACEWELL: Do you want us to read it into the record or hand it up?

THE COURT: Hand it up first.

MS. BRACEWELL: The parties would propose the following response:

Venue is proper in the Southern District of New York

where, (1) the defendant knowingly or intentionally causes an act in furtherance of the charged offense, or (2) it is foreseeable that such an act would occur in the Southern District of New York.

A victim's communication from the Southern District of New York would be sufficient if, as stated above, (1) the defendant knowingly or intentionally caused such communication, or, (2) it is foreseeable to the defendant that such communication would occur, provided that such communication is in furtherance of the charged offense.

THE COURT: All right. I will just add a couple of words in the second paragraph, a victim's communication from the Southern District of New York would be sufficient, insert "to satisfy the venue requirement," if, as stated above, et cetera.

Bring in the jury, please.

(Jury present)

THE COURT: The Court has received a note sent today at 1:50 through the foreperson. The question is relating to the venue instruction, and your question is what is the definition of an act in furtherance and by whom? Is it sufficient if the victim communicated from the Southern District?

In response, I instruct you that venue is proper in the Southern District of New York where, (1) the defendant

knowingly or intentionally causes an act in furtherance of the charged offense, or (2) it is foreseeable that such an act would occur.

A victim's communication from the Southern District of New York would be sufficient to satisfy the venue requirement if, as stated above, (1) the defendant knowingly or intentionally caused such communication, or (2) it is foreseeable to the defendant that such communication would occur, provided that such communication is in furtherance of the charged offense.

We hope that that clarification is useful. You may now return to your deliberations.

Let me ask the foreperson if there are any additional notes, please use the note form.

THE FOREPERSON: Could you transcribe that for us?

THE COURT: You want the text of what I just read.

(Jury not present)

MR. MARGULIS-OHNUMA: The parties have no objection if the court reporter could send it back. We offer it.

(Recess taken)

THE COURT: The Court received two notes from the jury through the foreperson, the first dated July 12 the 4:05 p.m., and we marked Court Exhibit Number 3, and it says: We need two copies of Kaira's testimony.

The second, which we marked Court Exhibit Number 4,

reads: Count Number One, page 34 -- I presume that means 34 of the instructions -- with respect to the requirement about "acting knowingly," is it limited solely to a finding of "advertising," or would it apply to any finding under the first alternative of the first element of Count One, e.g., recruited, enticed, et cetera?

Again this is dated July 12, there's no time on it.

I should have added that we also have received Court Exhibit Number 2 as marked from the jury indicating that they're not going to finish today and they plan to break at 5:00 p.m.

So let us briefly see whether the parties have had an opportunity to review the testimony of Kaira and develop a version that may be suitable to send to the jury probably on Monday morning at this point.

MS. TARLOW: Yes, your Honor, we have. The parties have conferred and we have agreed upon redactions for Ms. Brown's testimony.

THE COURT: All right. Thank you. And have you examined the Exhibit Number 4 and have an understanding of what the jury seeks?

MS. TARLOW: Your Honor, we have begun to examine it and are discussing it amongst ourselves but have not yet reached agreement on what language should be given to the jury.

THE COURT: All right. Thank you.

I will call in the jury and discharge them for the weekend and direct that they return on Monday at a time designated by them. When they do return on Monday, I will direct them to report to the jury room and not come into the courtroom, and we will then call them in and I will inform them that we will have for them the testimony of Kaira, and that we'll have an answer concerning the second request.

Any other questions?

Thank you. I ask the security officer to send in the jury.

(Jury present)

THE COURT: Thank you. I have received three notes that you have sent out. Court Exhibit Number 2 informed the Court that you are not going to finish today and that you plan to break by 5:00 p.m.

I have read the content of your second note, which I will mark Court Exhibit 3 asking for the two copies of Kaira's testimony. We have gone through the transcript of that testimony and we will have it ready for you on Monday morning so that you will be able to resume your deliberations with that on Monday morning.

I have also read to the parties your second request marked now Court Exhibit Number 4 concerning the requirement about acting knowingly. We are developing a response for that, and the best thing to do would be to have that for you, again,

early Monday morning.

Just a couple of housekeeping things. When you come back on Monday morning, first, have you determined a time when you will be resuming?

JUROR: It's up to us?

THE FOREPERSON: What time would you like us?

THE COURT: This is entirely up to you.

THE FOREPERSON: 9:30 sounds like a consensus.

THE COURT: That's fine. We will have a response on that second request to you again when you return at 9:30. When you do come back on Monday, report directly to the jury room. You need not come in to here. I will call you in when we're ready to provide the answers.

It's very important that you not have any deliberations or discussion about the case until all of you are present, for obvious reasons.

And lastly, as you go home for the weekend, having begun your deliberations, this is not yet the time where you're free to discuss anything about the case with anyone on the outside or have any contact whatsoever concerning the case with anyone. And once again, if any of these things occur, you are directed to inform me immediately and not discuss it with your fellow jurors.

You're adjourned for the weekend. We thank you for your patience and indulgence up to this point, and we will see

you on Monday around 9:30.

(Jury not present)

THE COURT: Thank you. Do the parties having anything else that you wish to discuss?

MS. TARLOW: Not from the defendant, your Honor.

MR. MARGULIS-OHNUMA: No, your Honor.

THE COURT: Thank you. Have a good weekend, and we'll see you Monday morning.

MR. MARGULIS-OHNUMA: 9:30 for us, too?

THE COURT: Since we still have to develop an answer on that other question, perhaps we should meet around 9:15.

MR. MARGULIS-OHNUMA: Yes, your Honor.

(Adjourned to July 15, 2019 at 9:15 a.m.)

DEFENDANT EXHIBITS

Exhibit No.	Received
M	789